REPARATIONS GUIDE

A Framework for Documenting, Investigating, Advocating for, and Seeking Reparations for Starvation-Related Crimes and Economic, Social and Cultural Human Rights Violations

Global Rights Compliance

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The present Guide complements GRC's Starvation Training Manual (available in Arabic, English and Ukrainian) and Mobile App (available in Arabic and English) by providing a framework for conducting research aimed at documenting, investigating or seeking reparations for victims in the context of starvation and starvation-related violations. It presents information on the concept of reparations in international law, with a focus on the individual right to reparation for international law violations, forms and standards of reparations, and a framework for conducting reparations research.

The Starvation Manual and App are unique tools that enable practitioners to identify, document, monitor, preventively respond to and seek accountability for the deliberate use of starvation and starvation-related violations. First developed in 2019, with a second issue released in 2022 and a Ukrainian special issue published in 2023, the Starvation Manual contains three parts; (i) the legal framework of starvation under international law; (ii) GRC's Basic Investigative Standards, adapted and expanded for the investigation of starvation crimes; and (iii) remedies and standard operation procedures for engaging with accountability mechanisms, UN mandate holders and sanctions regimes and case selection and prioritisation.

WHO WE ARE

GLOBAL RIGHTS COMPLIANCE (GRC) is a hybrid international law and development firm with one mission: to seek and achieve justice through the innovative application of the law. We specialise in on-the-ground international humanitarian law (IHL) and human rights issues in conflict-affected and high-risk areas around the world, working to identify, prevent and mitigate adverse IHL and human rights impacts.

Since 2017, GRC has been working with a range of state, civil society, and international organisational partners to advance the prevention and prohibition of, as well as accountability and reparations for, mass starvation and associated violations.

Our approach is based on the understanding that to contribute optimally and in a sustainable manner to the protection of citizens, a focus on prevention alone is insufficient. Action to enhance prohibition, accountability, and reparations for victims-survivors must also be taken and it must form part of an integrated and holistic program of awareness and reform relating to starvation as a violation of international law.

The present Guide was drafted on behalf of GRC by Nuria Pérez Cusó under the guidance of, and with editorial contributions by, Lina Baddour. It incorporates valuable reviews and feedback by Kristine Beckerle and Catriona Murdoch. The Arabic translation of the guide has been thoughtfully edited by Nuha Al-Ariki.

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INTRODUCTION

Conflict is the primary driver of food insecurity today. While hunger can be an unintended byproduct of armed conflict, there is increasing evidence that food crises during conflicts often stem from deliberate strategies to restrict civilian access to adequate food and other essential resources as a means of military advantage. Moreover, violations of economic, social, and cultural rights (ESCR), such as those relating to food, water, and health, are also often the root cause of violence and conflict.[1]

International law, including the frameworks of international humanitarian law (IHL), international human rights law (IHRL), and international criminal law (ICL), regulate starvation crimes and starvation-related violations.[2] ICL codifies deliberate starvation as a war crime, and its underlying conduct can also comprise crimes against humanity, and genocide in certain circumstances. Under IHL, the intentional use of starvation of civilians as a method of warfare is also prohibited. IHRL, applicable in times of peace and during armed conflict, protects individuals' civil and political rights (CPR), and economic, social and cultural human rights (ESCR) by establishing fundamental human rights, including to food, water, health, and an adequate standard of living - all of which can be undermined by starvation.

Unfortunately, in recent years, starvation and starvation-related violations have occurred causing lasting harms. Evidence suggests that civilians have been unlawfully deprived of food, water, medicine, and other objects indispensable to their survival through different means, including attacks on critical infrastructure, agricultural areas, and markets, and through the blocking of humanitarian aid in multiple, recent and ongoing conflicts. The victims of starvation and starvation-related violations often suffer varied, long-lasting and severe physical, psychological, and socioeconomic harms. Indeed, as a result of these international law violations, many have died and many others have been unable to access food, or water, or have contended with destroyed infrastructure or lost income, and thus suffered from hunger.

Given the gravity of these violations and their resulting harms, it is crucial to adopt comprehensive measures to provide adequate remedy, including reparations, for individual victims and communities. **Reparations aim to bring a measure of justice by formally recognizing the occurrence of starvation or a starvation-related violation, and taking the necessary steps to repair, as much as possible, the harms caused to victims**. However, despite the significant progress in establishing victims' right to reparations in law, the reality is that, in practice, most victims of international crimes, including starvation and starvation-related violations, do not receive any form of reparation.

The documentation of starvation and starvation-related violations for the purpose of advocating for and pursuing reparation claims remains underdeveloped. This Reparations Guide intends to enable practitioners to better understand, and thus better monitor, document and, where suitable and possible, pursue avenues for securing reparations for victims of these violations. It is designed to provide practitioners with the knowledge, tools, and strategies to effectively contribute to the documentation of starvation and starvation-related violations, with a view towards advocating for reparations for victims, supporting victims to pursue reparations, and contributing to the development of victim-oriented reparations processes and programs.

The present Guide explores reparations for starvation crimes, i.e. international crimes committed by individuals that involve deliberate starvation, for starvation-related violations of international humanitarian law committed

[1] E/2016/58: OHCHR Report on early warning and economic, social, and cultural rights.
[2] The present Guides explores reparations for starvation crimes, for starvation-related violations of international humanitarian law, and for starvation-related violations of international human rights law, with a focus on economic, social and cultural rights. Throughout, the Guide refers to these as "starvation and starvation-related violations."

by states or non-state armed groups during conflict that involve deliberate starvation, and for starvation-related violations of international human rights law, with a focus on economic, social and cultural rights, committed by states or non-state armed groups during times of conflict or in peacetime. Throughout, the Guide refers to these as "starvation and starvation-related violations." The range of relevant crimes and violations are discussed in more detail in the compendium Starvation Manual and App and in Annex V: Starvation within international legal framework.

This Guide focuses on the individual right to reparations, drawing from the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005). The Guide maps the relevant international legal framework on reparations for victims, the different forms of reparations for victims, the standards for assessing reparation measures and programs, and provides guidance on conducting reparations-focused research, including how to properly collect, document, and preserve information. By following the principles and practices outlined in the Guide, practitioners can help address the needs of victims and promote meaningful redress in the aftermath of starvation and starvation-related violations.

This Guide is aimed at a wide range of practitioners, including human rights defenders, journalists, civil society organisations, academics, and humanitarians interested in being able to identify where lines have been crossed and what options for reparations may be available for victims. Depending on their mandate and capacities, practitioners can support victims in pursuing reparations for starvation and starvation-related violations through various means. This includes offering technical and legal expertise during reparations processes, gathering and preserving information for future claims, advocating for victims' rights to reparation, and increasing awareness of the individual right to reparations among victims and civil society groups. Practitioners can assist with investigations and documentation efforts to capture what crimes or violations may have been committed and the full extent of the harm(s) suffered by the victims as a result of these abuses. They can also contribute by mapping victims' needs and preferences for different types of reparations and explore all possible avenues for redress.

The Reparation Guide is divided in six sections:

PART ONE: This section provides an overview of the international legal framework governing the individual right to reparations and its recent development, particularly within the frameworks of international human rights law (IHRL), international humanitarian law (IHL), and international criminal law (ICL).

PART TWO: This section outlines the forms of reparations and the principles or standards for assessing the adequacy of reparations. First, it provides an overview of the different forms or modalities of reparations and addresses the key reparation measures that can be adopted, namely restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Practitioners will also gain insights into how these measures might apply to starvation and starvation-related violations, including the short and the long-term impacts on individuals and communities affected by these violations. Second, it outlines the standards that have emerged to address the right to reparations and that should guide the design and implementation of reparations for victims of starvation and starvation-related violations. Reparation measures should be adequate, prompt, effective, full, comprehensive, transformative, proportional, and include recognition of harm and acknowledgement of responsibility. By advocating for and assessing whether reparations measures and policies meet these standards, practitioners can play a fundamental role in ensuring that the rights and needs of victims are effectively addressed during reparation processes.

PART THREE: This section provides a framework for reparations research. It focuses on the practical aspects of documenting starvation and starvation-related violations to support victims in their pursuit of reparations. This section is specifically designed to ensure that practitioners document the necessary and most relevant information to establish a violation has occurred or crime been committed and to make claims for reparations. This section guides practitioners in conducting reparations research by breaking the research process down into six key areas, namely: the commission of an international wrongful act, victim(s) harmed as a consequence of this international wrongful act, the nature and extent of the harm(s) suffered, a responsible party (including state(s), non-state actor(s), or individual(s), the victims' needs and preferences, and the avenues for seeking redress.

Annexes to this Guide include a reparation template interview guide and a template questionnaire to map victims' needs and preferences for reparations and understanding of justice. Practitioners will need to adapt these templates to ensure they are relevant and specific to the contexts in which they are operating.

PART FOUR: This section outlines GRC's Basic Investigative Standards,[3] the six essential rules practitioners should follow while conducting reparations research: Do no harm, maintain minimum standards, maintain impartiality and objectivity, know your limits, obtain informed consent, and protect confidentiality.

PART FIVE: This section presents the different types of information that practitioners can collect during their research, including testimonial, documentary, physical, and digital information. It also outlines the minimum standards for the investigation or documentation of starvation and starvation-related violations to ensure that relevant information is safely collected, handled and preserved.

PART SIX: This section provides three case studies of starvation or starvation-related violations. Following the structure of a reparation research plan (Part Three), it offers a set of questions to help determine whether the crime of starvation has occurred, who was harmed by this internationally wrongful act, the nature and extent of the harm suffered by victims, who was responsible for the internationally wrongful act, what are the needs and preferences of the victims, and what are the potential avenues where victims can seek redress

[3] GRC Starvation Training Manual: The Starvation Training Manual is a unique toolkit designed for a wide audience including professional investigators, human rights defenders, journalists, civil society organisations, academics, the military police officers, and humanitarian actors, interested in being able to identify the deliberate use of starvation, strengthen protection strategies and insulate their operations, reporting and responses. The GRC Starvation Accountability App is free to download from Google Play and the Apple App Store.

PART 1: REPARATIONS WITHIN INTERNATIONAL LEGAL FRAMEWORKS

The present section provides an overview of the international legal framework of victims' right to reparation and its development, including within the international human rights law, international humanitarian law, and international criminal law frameworks.

The individual right to reparation

Violations of international law, including starvation and starvation-related violations, entail the duty to provide effective remedies, including reparation. **Reparations are substantive measures that seek to redress the harms caused by these violations by formally recognizing the occurrence of the wrongdoing, and taking the necessary steps to repair, as much as possible, the harms caused to victims.**

In 2005, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles),[4] summarized the law, practice, and jurisprudence on reparations for victims.[5] According to these principles, the obligation to respect and implement IHRL and IHL includes the duty to **provide effective remedies to victims, including reparation**.[6]

The UN Basic Principles, while not legally binding, reflected a strong consensus amongst states on the individual right to reparation and marked an important step in the evolution of victim-centered reparations in international law.[7] The principles stress that victims are entitled to **adequate, effective, and prompt reparation** which should be **proportional to the gravity** of the violations **and the harm** suffered. It sets out the definition of a **victim** and recognizes that the right of victims to obtain full and effective reparations, which may include **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition**.[8]

According to **Principle 15** of the UN Basic Principles:

> Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered.[9]

[4] UN Basic Principles; See also T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines'
[5] UN Basic Principles, Preamble "the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms".
[6] T. van Boven, 'The United Nations UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', p. 2-3. (T. van Boven, 'The United Nations UN Basic Principles and Guidelines'); T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines', p. 32-34.
[7] T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines', p.21
[8] UN Basic Principles; For detailed information about the different forms of reparations measures see Part 2: Forms and standards for reparations.
[9] UN Basic Principles, Principle 15.

Using starvation as a method of warfare is a serious violation of IHL and starvation-related violations of ESCR can constitute gross human rights violations.[10] While the UN Basic Principles primarily focus on victims of *gross* violations of human rights and *serious* violations of international humanitarian law, it is generally recognized that, in principle, all violations of IHRL and IHL entail legal responsibility and consequences. In this regard, the UN Basic Principles included Principle 26 on non-derogation stating that '[I]t is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights and international humanitarian law'.[11]

While the UN Basic Principles generally foresees reparations being provided by States, as discussed later in this section, reparations can also be owed and provided by individuals and non-State armed groups. As described in **Principle 15** of the UN Basic Principles:

> In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.

In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.[12] The UN Basic Principles provide valuable guidance to practitioners and, given their widespread support among states, can influence the development of legislation, reparations programs and judicial decisions in various contexts.[13] **The UN Basic Principles are a great starting point for practitioners seeking to learn more about international law and standards for the individual right to reparation.**

From claims between States to victim-oriented reparations

As a basic rule of international law, **states are required to provide reparations** when they are responsible for **violations of international law**. In 1927, the concept of reparations was articulated as a state duty in the *Chorzow Factory case*, where the Permanent Court of International Justice (PCIJ), an international law court that heard claims between states and was the precursor to today's International Court of Justice (ICJ), held that:

> It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form.[14]

This duty to provide reparations to the entity whose rights have been violated, most often a State, has been repeatedly reaffirmed, first by the PCIJ, and later by the ICJ. The Draft Articles on State Responsibility, adopted by the International Law Commission in 2001, reiterated this general principle,[15] i.e. that a State responsible for an internationally wrongful act has an obligation to make

[10] The definition of 'gross violations' and 'serious violations' is not formally defined in international law. However, they generally refer to violations that, in qualitative and quantitative terms, undermine the most fundamental rights of individuals. This would include for example the deliberate and systematic deprivation of essential foodstuffs, vital primary health care, or basic shelter and housing, all of which may amount to gross violations of human rights (The Right to a Remedy and Reparation for Gross Human Rights Violations. A Practitioners' Guide Revised Edition, International Commission of Jurist, 2018, p xii, Terminology. (ICJ 'A Practitioners' Guide')); According to the Geneva Academy, violations of the right to food constitute a gross violation of IHRL. Geneva Academy briefing No.6 What amounts to 'a serious violation of international human rights law'? (2014); See also Conley, De Waal, Murdoch, Jordash, Accountability for Mass Starvation, Testing the Limits of the Law, OUP, (2022), p.134, Hutter ("the right to freedom from hunger consists the indispensable basis for the exercise of all other human rights and is the only human right of the two UN Covenants on human rights referred to as 'fundamental'").

[11] For further analysis see T. van Boven, 'The United Nations UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', p. 2-3. (T. van Boven, 'The United Nations UN Basic Principles and Guidelines') and T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines', p. 32-34.

[12] UN Basic Principles, Principle 15.

[13] T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines', p.31; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para. 18.

[14] Case *Factory at Chorzów, Germany v Poland,* Jurisdiction, Judgment, PCIJ Series A, No. 9, 26 July 1927, p. 21 ('*Chorzów, Germany v Poland* Judgment').

[15] ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001, Article 31.1.

full reparation for the injury caused. The content and scope of the reparation obligation has been further developed within the jurisprudence of the ICJ, including for harms to individuals.[16]

While the obligation to provide reparations was traditionally focused on inter-state disputes,[17] there has been an increasing recognition that **individual victims** have the **right to seek and receive reparations** for IHRL and IHL violations and international crimes.[18] This recognition is based on the understanding that victims of internationally wrongful acts should be provided with remedies and redress for the harm they have suffered. The rising recognition of the individual right to reparation is closely linked to the development and increasing prominence of International Human Rights Law (IHRL), which has elevated the status of the individual as a rights-holder in international law, including vis-à-vis States.

The ICJ has recognized that a State can owe reparations to individual victims of international wrongs. See, for example, the ICJ Advisory Opinion on the *Legal Consequences of the Construction of a Wall* in the Occupied Palestinian Territory, where the Court determined that Israel had the obligation to make reparation for the damage caused to *'all natural or legal persons having suffered any form of material damage as a result of the wall's construction.'*[19]

In addition to individuals being provided and receiving reparations directly, States can also still claim and receive reparations on behalf of their nationals. This area of international law is continuing to develop.[20]

The victim-oriented right to reparation, and an individual's claim to reparation in relation to wrongs committed by their own State, other States, individuals and non-state armed groups, has been developing through the creation of **national reparation programs**, and the establishment of international ***ad hoc* reparation mechanisms**, such as the United Nations Compensation Commission (UNCC)[21] and the Eritrea–Ethiopia Claims Commission (EECC),[22] registries of damages such as the Register of Damage for Ukraine, and others.[23] For more information see Part 3: A framework for reparation research, Avenues for seeking redress.

[16] For example, see *Case Concerning Armed Activities on the Territory of the Congo* (DRC v. Uganda), Judgment, 19 December 2005, para.259; *Armed Activities on the Territory of the Congo* (DRC v. Uganda), Reparations, 9 February 2022.

[17] Promotion of truth, justice, reparation and guarantees of non-recurrence. Note by the Secretary-General, A/69/518, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 14 October 2014, para. 14 ('Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014'); See also Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report / submitted by Theo van Boven, Special Rapporteur, 2 July 1993, E/CN.4/Sub.2/1993/8, para 42; Evans C. *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge University Press 2012), p.29 ('Evans 2012'); Rule of Law Tools for Post-Conflict States: Reparations Programmes, OHCHR, HR/PUB/08/1, 2008, p. 5 (OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes').

[18] United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 ('UN Basic Principles'), Principle 12; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, paras.14-18; 'Evans 2012'; Human Rights Committee, General Comment No. 31, paras. 15-17.

[19] ICJ Wall Opinion, p. 136; Subsequently, the UNGA requested the Secretary-General to establish a register of damage caused to all natural or legal persons (ES-10/15). In October 2006, the Secretary-General proposed an institutional framework for the establishment of the Register of Damage (A/ES-10/361); ICJ Advisory Opinion, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (2024), paras.269-271; See Register of Damage caused by the construction of the Wall (UNROD) Rules and Regulations Governing the Registration of Claims; For more information about Registry of Damages see Part 6: Avenues for Seeking Reparations.

[20] The rule of diplomatic protection applies at the inter-State level—if a victim State receives reparations on behalf of its nationals, the victim State can then distribute these reparations to natural persons, if it so chooses; For further information see ILC Draft Articles on Diplomatic Protection.

[21] Established in 1991 to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's invasion and occupation of Kuwait. It formally closed on 31 December 2022.

[22] Established as part of the Algiers Agreement of 2000, its primary mandate was to decide on claims for compensation made by both Eritrea and Ethiopia arising from the two-year-long conflict. See https://pca-cpa.org/en/cases/71/; Eritrea-Ethiopia Claims Commission - Preliminary Decisions. August 2001, December 2005 and July 2007.

[23] Furuya S, Correa C, Furuya S, Sandoval C. The Right to Reparation for Victims of Armed Conflict: The Intertwined Development of Substantive and Procedural Aspects. In: *Reparation for Victims of Armed Conflict*. Max Planck Trialogues. (Cambridge University Press; 2020), p.17; Report of the International Law Commission Annex B. Claudio Grossman Guilof. Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law, p.359.

Recent developments in victims' right to reparation include:

Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and other International Crimes (MLA Convention).[24] This instrument could play a crucial role in safeguarding and upholding the rights of starvation victims,[25] including their right to reparations:

- It requires **international cooperation in the confiscation and recovery of perpetrators' assets to ensure the implementation of victim's rights to reparations.[26]**
- **States should ensure victims' right to reparation** not only when the crime is attributable to the State, but also **where the crime is "committed in any territory under the jurisdiction of the State Party" or where the "State Party is exercising its jurisdiction over the crime**."[27]
- When a reparation judgment or order is issued in criminal proceedings of a State party, States shall cooperate to give effect to it.[28]
- Importantly, this Convention applies to the war crime of starvation in international armed conflicts (IACs) and, where the State has made a notification under Article 2, para 2, it also covers the crime of starvation in non-international armed conflicts (NIACs).[29]
- 34 States have signed the Convention so far.[30]

The Draft Convention on the Prevention and Punishment of Crimes Against Humanity (CAH Draft). Article 12 of the CAH Draft contains language on victims' right to reparation:

> "Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction, have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition."

Reparations under International Human Rights Law

International Human Rights Law (IHRL) is a body of law that safeguards the dignity of people and their fundamental freedoms at all times.[31] **IHRL applies at all times including during peace and conflict, is**

[24] On 26 May 2023, States adopted MLA Convention or the Ljubljana-The Hague Convention. According to Article 1, the objective of the MLA Convention is to facilitate international cooperation in criminal matters between States Parties with a view to strengthening the fight against impunity for international crimes; For further information see Leanna Bunnard and Danaé van der Straten Ponthoz, "Paving the Way for Asset Recovery and Reparations", in Opinio Juris, 2 August 2023; see also: Julie Bardèche, "A Giant with Feet of Clay? Victims' Right to Reparation in the MLA Convention", in Opinio Juris, 1 August 2023.

[25] This Convention applies to the war crime of starvation in IAC and, where the State has made a notification under Article 2, para 2, it also covers the crime of starvation in NIACs (Annex E).

[26] MLA Convention, Articles 45-47.

[27] MLA Convention, Article 83.

[28] MLA Convention, Article 83.3 ("Each State Party shall, to the extent provided for in its domestic law and if so requested, give effect to a judgment or order in criminal proceedings, issued in accordance with the domestic law of the requesting State Party, to provide restitution, compensation or rehabilitation to victims of crimes to which it applies this Convention.").

[29] MLA Convention, Annex E.

[30] As of July 2024, 34 States have signed the Convention.

[31] Historically, IHRL is for peacetime. See R. Kold, 'The Relationship Between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions' (1998) 324 International Review of the Red Cross 409; J.-M. Henckaerts, 'Concurrent Application of International Human Rights Law and International Humanitarian Law' (2007) 1 Human Rights and International Legal Discourse 1 ('Henckaerts, 'Concurrent Application of IHRL'). The applicability of IHRL in times of war have since been acknowledged by various UN resolutions. See, e.g., **Korean war**: UNGA Res. 804 (3 December 1953) UN Doc A/RES/804; **Israel-Palestine**: UNGA Res. 237 (14 June 1967) UN Doc A/RES/2252, UNGA Res. 2252 (ES-V) (4 July 1967) UN Doc A/RES/3419; **Iraq**: UN Commission on Human Rights Res. 1992/60 (3 March 1992) UN Doc E/CN.4/RES/1992/60; **Sudan**: UN Commission on Human Rights Res. 1996/73 (23 April 1996) UN Doc E/CN.4/RES/1996/73; **former Yugoslavia**: UNSC Res. 1019 (9 November 1995) UN Doc S/RES/1019, UNSC Res. 1034 (21 December 1995) UN Doc S/RES/1034, UNGA Res. 50/193 (22 December 1995) UN Doc A/RES/50/193; **Syria**: UNSC Res. 2258 (22 December 2015) UN Doc S/RES/2258, UNSC Res. 2268 (26 February 2016) UN Doc S/RES/2268; **Yemen**: UNSC Res. 2216 (14 April 2015) UN Doc S/RES/2216; **Somalia**: UNSC Res. 2036 (22 February 2012) UN Doc S/RES/2036, UNSC Res. 2093 (6 March 2013) UN Doc S/RES/2093, UNSC Res. 2297 (7 July 2016) UN Doc S/RES/2297, UNSC Res. 2408 (27 March 2018) UN Doc S/RES/2408; **South Sudan**: UNSC Res. 2206 (3 March 2015) UN Doc S/RES/2206, UNSC Res. 2241 (9 October 2015) UN Doc S/RES/2241, UNSC Res. 2187 (25 November 2014) UN Doc S/RES/2187.

simultaneously applicable whenever IHL and/or ICL applies,[32] and provides an avenue for victims to seek redress.[33]

Under the **IHRL framework**, the right to be free from starvation is protected within the context of economic, social and cultural (ESC) rights, such as the right to food, water, health, housing, and livelihood, and in the context of civil and political (CP) rights, such as the right to life and right to be free from torture and cruel, inhuman or degrading treatment. These rights can be violated when the State fails to meet its obligations **to respect** (by abstaining from specific conduct resulting in human rights violations), **protect** (by taking positive steps towards ensuring the human rights), and **fulfil** human rights.[34]

Aside from establishing these primary rules, IHRL establishes the right of victims to seek and obtain reparation when their rights have been violated.[35] Specifically, IHRL recognizes the human rights of every human being and establishes obligations on States to ensure, secure or guarantee the effective enjoyment of human rights to all within their jurisdiction.[36] The latter component entails the obligations of States to provide adequate remedies and procedural measures to protect against human rights violations and to investigate them.[37]

This right to seek and obtain reparations is reflected in binding **international human rights instruments**. For example, Article 2(3) of the **ICCPR** provides that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". The Human Rights Committee **(HRC)**,[38] which interprets this Covenant, has stated that Article 2(3) of the ICCPR requires that States Parties make reparation to individuals whose Covenant rights have been violated:[39] 'Without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy … is not discharged'. Articles 9(5) and 14(6) of the ICCPR also provide a right to compensation for unlawful arrest, detention, and conviction.[40] Other examples include Article 6 of the **CERD**,[41] Article

[32] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestininan Territory*, Advisory Opinion, 9 July 2004 ('ICJ Wall Opinion'), para. 106; *Case Concerning Armed Activities on the Territory of the Congo* (DRC v. Uganda), Judgment, 19 December 2005, para. 216; *Ergi v. Turkey*, Application No. 66/1997/850/1057, Judgment, 28 July 1998; *Ahmet Ozkan and Others v. Turkey*, Application No. 21689/93, Judgment, 6 April 2004; *Isayeva and Others v. Russia*, Application Nos. 57947/00, 57948/00 and 57949/00, Judgment, 24 February 2005; *Isayeva v. Russia*, Application No. 57950/00, Judgment, 24 February 2005; *Cyprus v. Turkey*, Application No. 25781/94, Judgment, 10 May 2001 ('*Cyprus v. Turkey* Judgment'); *Varnava and others v. Turkey*, Applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment, 18 September 2009; *Hassan v. UK*, Application No. 29750/09, Judgment, 16 September 2014 ('*Hassan v. UK* Judgment'); *Al-Jedda v. UK*, Application No. 27021/08, Judgment, 7 July 2011; *Al-Skeini and Others v. UK*, Application No. 55721/07, Judgment, 7 July 2011; *Bámaca-Velasquez v. Guatemala*, Case No. 70, Judgment, Merits, 25 November 2000, paras 203-214. See also CCPR, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (29 March 2004) ('Human Rights Committee, General Comment No. 31'), para. 11; CCPR, 'General Comment No. 36: Article 6 Right to Life' (3 September 2019) ('Human Rights Committee, General Comment No. 36'), para. 64; CCPR 'General Comment No. 35: Article 9 Liberty and Security of Person' ('Human Rights Committee, General Comment No. 35'), para. 64.

[33] UN Human Rights Office of the High Commissioner, 'Manual on Human Rights Monitoring', p.4.

[34] Although debatable, there is broad acceptance that at least the non-state armed groups (NSAGs) which are 'exercising either government-like functions or de facto control over territory and population must respect and protect the human rights of individuals and groups'.(OHCHR, 'Joint Statement by Independent United Nations Human Rights Experts on Human Rights Responsibilities of Armed Non-State actors,' (25 February 2021). Similar to states, the NSAGs in such circumstances are required to: 'respect' by abstaining from specific conduct resulting in human rights violation, 'protect' by taking positive steps towards ensuring the human rights of the civilian population under their control, or at least the minimum core obligations of these rights.(T. Rodenhäuser, *Organizing Rebellion: Non-State Armed Groups Under International Humanitarian Law, Human Rights Law, and International Criminal Law* (OUP 2018), p. 149). Additionally, NSAGs which have displaced the state authorities in the concerned territory are also being subjected to the obligation to 'fulfil' human rights, at least the obligation to facilitate people's access to basic human rights. (Hutter, 'Starvation in Armed Conflicts, p. 750.).

[35] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. General Assembly resolution 60/147 (2005) ('UN Basic Principles'); UDHR, Article 8 affirms the right to an effective remedy for violations of human rights. This includes the right to seek and obtain reparation for harm suffered; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly Resolution 40/34 (1985); UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), Economic and Social Council resolution 1989/65, Principle 20; UN Declaration on the Elimination of Violence against Women UN Doc. G.A. res. 48/104 (1993); UN Basic Principles; Principles on housing and property restitution for refugees and displaced persons (E/CN.4/Sub.2/2005/17 and Add.1) (2005); Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, UN Doc E/CN.4/2005/102/Add.1 (2005) ('UN Principles on Impunity').

[36] The Right to a Remedy and Reparation for Gross Human Rights Violations. A Practitioners' Guide Revised Edition, International Commission of Jurist, 2018, p 19. (ICJ 'A Practitioners' Guide').

[37] ICJ 'A Practitioners' Guide', p 21; For example, in the case of *Velásquez Rodríguez*, the Inter-American Court of Human Rights held that ('As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.') Case *Velásquez-Rodríguez v. Honduras*, Judgment (Reparations and Costs), 21 July 1989, para. 166 ('*Velásquez-Rodríguez v. Honduras,* Reparations').

[38] The Human Rights Committee (HRC) is a quasi-judicial body of eighteen independent international expert members who meet three times a year in Geneva or in New York. Further updated information on the work of the HRC can be found on the official web page of OHCHR at: https://www.ohchr.org/en/treaty-bodies/ccpr

[39] Human Rights Committee General Comment No. 31, para. 16; See also Evans 2012.

[40] ICCPR, Articles 2, 9(5), 14(6).

[41] CERD, Article 6.

14 of the **CAT**,[42] Article 24(4) of the International Convention for the Protection of All Persons from Enforced Disappearance (**CPPED**),[43] and Article 39 of the **CRC**.[44]

States must provide reparations for violations of ESC rights. For instance, the Committee on Economic, Social and Cultural Rights **(CESCR), which hears complaints and interprets the IESCR,** has adopted General Comments where it has reiterated that remedies must be made available to rights-holders by states parties to the ICESCR.[45] The CESCR, as other human rights treaty bodies, has also provided useful guidance on the nature and the scope of the right to remedy in general and to reparation in particular.[46] For more information about the CESCR see Part 3: A framework for reparation research, Avenues for seeking redress, Committee on Economic, Social and Cultural Rights.

The obligation to provide reparation is enshrined in a number of **regional human rights instruments** including, namely, the American Convention on Human Rights (**ACHR)**,[47] the European Convention on Human Rights (**ECHR)**,[48] the African Charter on Human and People's Rights (**ACHPR)** and its additional protocols,[49] and **the Arab Charter on Human Rights**.[50]

States that have ratified these instruments are legally bound to **provide an effective remedy, including reparations**, to the individual whose protected rights have been violated,[51] including their economic, social and cultural rights.[52] When the state fails to fulfil its obligations or domestic remedies are not effective, these human rights instruments recognize the **right of victims to seek reparation** before regional and international justice avenues.[53]

National and regional **human rights courts** have also played a major role in developing a growing body of jurisprudence on the right to reparations, providing guidance and contributing to the consolidation of the right to reparation in international law.[54] At the **regional level**, the Inter-American Court of Human Rights, [55] the European Court of Human Rights[56] and the African Court on Human and Peoples' Rights[57] have clarified that states have a duty to provide reparation to victims and have developed a rich body of jurisprudence on the matter.[58] Some regional human rights systems also provide avenues where individual victims of international human rights violations can seek reparations for the harm they have suffered. Other regions, however, including large parts of the Middle East, lack a regional human rights court to which individuals can bring claims. For more information on Avenues see Part 3: A framework for reparation research.

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[42] CAT, Article 14 ('Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation'). The Committee against Torture was established pursuant Article 17 of the CAT and it has given further interpretation to the concept of reparations. See for example, Committee Against Torture, General Comment No. 3, UN Doc. CAT/C/GC/3 (2012) ('CAT General Comment No. 3').

[43] The International Convention for the Protection of All Persons from Enforced Disappearance, ('CPPED') UN Doc. G.A. res. 47/133, (2010), Article 24(4), (5).

[44] CRC, Article 39.

[45] E.g. CESCR, General Comment No. 9, paras. 2-3; CESCR, General Comment No. 12, paras. 32-35; CESCR, General Comment No.14, para 59; General Comment No. 15., paras 55 ('All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition').

[46] ILC, Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law, at 360, para. 12 ('Report of the International Law Commission'); For more information see Evans 2012, Chapter 3 on jurisprudence by human rights bodies; The **CESCR** has stated that the right to an effective remedy may be of judicial or administrative, and that 'Any such administrative remedies should be accessible, affordable, timely and effective'CESCR, General Comment No. 9, para. 9.

[47] ACHR, Articles 10, 25, 63(1).

[48] ECHR, Article 5(5), 13, 41.

[49] ACHPR, Article 7(1)(a); Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (P-ACHPR) Article 27 (1).

[50] League of Arab States, Arab Charter on Human Rights, (1994), Article 16 ('Arab Charter').

[51] See, e.g., ICCPR, Article 2(3); ECHR, Article 13; ACHR, Article 2, 25; ACHR, Articles 2 and 7; Human Rights Committee, General Comment No. 31.

[52] All these regional treaties offer protection of ESCR violations to varying degrees. For an overview see ESCR-net. Regional Systems

[53] ICCPR Optional Protocol I, Articles 1-2; ECHR, Articles 34-35; ACHR, Articles 44-47; ACHPR, Articles 55-56<, See Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para. 14.

[54] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para.17.

[55] *Velásquez-Rodríguez v. Honduras,* Reparations, para 25*; Loayza-Tamayo v. Peru*, Judgment (Reparations and Costs), 27 November 1998, para. 84 ('When an unlawful act imputable to a State occurs, that State becomes responsible in law for violation of an international norm, with the consequent duty to make reparations').

[56] *X and Y v the Netherlands*, Application no. 8978/80, Judgment, 26 March 1985, Series A 91, para 27 ('Judgment *X and Y v the Netherlands')*; *Aksoy v Turkey*, Application no. 21987/93, Judgment, 18 December 1996, Reports 1996-VI, para 98. ('*Aksoy v Turkey* Judgment')

[57] *Konate v. Burkina Faso*, Application No. 004/2013, Judgment on Reparations, 3 June 2016, para.15.a ('A state found liable of an internationally wrongful act is required to make full reparation for the damage caused.'); *Zongo v. Burkina Faso*, Application No. 013/2011, Judgment on Reparations, 5 June 2015. para. 20.

[58] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, , A/69/518, 2014, para. 17; Note that the Charter and League of Arab States currently lack any enforcement mechanisms. For more information on this matter see International Commission of Jurists 'The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court' and M. Amin Al-Midani 'The Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights'.

Reparations under International Humanitarian Law

International humanitarian law (IHL), applicable during armed conflict and occupation,[59] prohibits the **starvation of civilians as a method of warfare.** The Additional Protocols to the 1949 Geneva Conventions expressly recognise the prohibition of starvation as a weapon of war in international[60] and in non-international armed conflicts.[61] IHL rules also establish that where a civilian population is inadequately supplied and their needs are not met,[62] parties to the armed conflict have the **obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief**.[63] Moreover, the prohibition of starvation is widely considered to form **customary international law**, binding all parties to an armed conflict regardless of whether they have ratified the relevant treaties.[64] For detailed information on the IHL framework on Starvation see Annex V: Starvation within international legal framework.

Multiple IHL instruments applicable to international armed conflicts recognize the obligation of States to provide reparation for IHL violations:

- **Article 3 of Hague Convention IV** of 1907 respecting the Laws and Customs of War on Land (HC IV), stipulates that: '[a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.'[65]
- In similar terms, **Article 91 of the Protocol Additional to the Geneva Conventions** of 1949 and relating to the Protection of Victims of IACs of 1977 (AP I), states that parties to a conflict shall be 'liable to pay compensation' for violations of the Geneva Conventions and AP I.[66]

Others: Article 3 and 4 of the Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and **Article 68** (GCIII).[67]

Traditionally, IHL treaty provisions were interpreted as giving rise to obligations between States. However, this area of the law has slowly developed towards recognizing the rights of individuals.[68]

The Hague Convention (IV) and AP I, both applicable to international armed conflicts, require the payment of compensation but do not say to whom that compensation is owed, nor do they provide express recognition of the right to reparation for individual victims of IHL violations.[69] However, the **ICRC Commentary on Article 91 of AP I** clarifies that since 1945 there has been a growing recognition of the **rights of individuals to seek remedies for violations of IHL**. The Commentary further explains that those entitled to compensation will generally include **parties to the conflict or their nationals**.[70]

IHL instruments applicable to non-international armed conflicts do not mention reparation. Neither common Article 3 of the Geneva Conventions nor Additional Protocol II mention the obligation for parties to **NIACS** to provide reparation. Nonetheless, **Rule 150 of customary IHL,** applicable in both IACs and

[59] The applicability is triggered by the existence of factual circumstances irrespective of any formalities such as a declaration of war. For criteria of determination of the existence of an armed conflict, see M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar 2019) ('Sassòli *IHL*'), pp. 169, 176, 180, 183.
[60] Article 54(2) of Additional Protocol I, applicable in IACs, prohibits to "attack, destroy, remove or render useless objects indispensable to the survival of the civilian population [...] for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."
[61] Article 14 of Additional Protocol II, applicable in NIACs, provides that "it is prohibited to attack, destroy, remove or render useless [for the purpose of starving], objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works".
[62] ICRC Q&A and Lexicon on Humanitarian Access (June 2014), p. 6.
[63] GC IV, Articles 23, 59, 61; AP I, Article 70; AP II, Article 18(2); *Customary IHL: Rules*, Rules 55-56.
[64] ICRC Customary IHL Database, Rules, Rule 53 and Rule 54.
[65] Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Article 3 ('HC IV').
[66] AP I., Article 91.
[67] See, for example Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 3 'each Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the [prohibition on exporting cultural property from occupied territory during an armed conflict.', Article 4. 1The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph'; Article 68, GC III, provides that '[a]ny claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power.'
[68] Salmón E, Pérez-León-Acevedo J-P. 'Reparation for victims of serious violations of international humanitarian law: New developments'. International Review of the Red Cross. 2022 ;104(919):1315-1343; Theodor Meron, *The Humanization of Humanitarian Law*, (American Journal of International Law, Vol. 94, No. 2, 2000).
[69] L. Moffett 'Reparation Options for the War in Ukraine' (2022) Queen's University Belfast, p.9 ('it is unclear to whom the obligation to reparations is owed, individuals are not mentioned so it is difficult to argue that an individual right exists for IHL violations.') (L. Moffett 'Reparation Options for the War in Ukraine'); P. Gaeta, 'Are Victims of Serious Violations of International Humanitarian Law Entitled to Compensation?' In O. Ben-Naftali (ed.), *International Humanitarian Law and International Human Rights Law*, (OUP 2011), 305-327, p. 308. ('Gaeta 2011').
[70] ICRC Commentary to the APs, paras. 3656-3657 regarding AP I, Article 91.

NIACs, stipulates that 'A State responsible for violations of international humanitarian law is **required to make full reparation** for the loss or injury caused.'[71]

The obligation to provide reparations for IHL violations extends beyond States actors. Non-State armed groups that are parties to an armed conflict are bound by international humanitarian law, including Common Article 3 to the Geneva Conventions, Additional Protocol II and customary IHL.[72] It is an emerging principle that non-State armed groups, particularly those that exercise control over territory, are required to provide reparation for those harmed as a result of their international law violations.[73] For more on the reparation legal framework applicable to non-state armed groups, see Part 3: A framework for reparation research, Responsible Parties.

In addition to treaty sources, non-binding international law sources indicate increasing recognition of the obligation to provide reparation for IHL violations, including to individual victims of those violations. The UN Basic Principles include victims' right to reparation not only in relation to gross violations of human rights but also in relation to serious violations of international humanitarian law.[74] Further, international practice has indicated that states owe reparation for IHL violations.[75]

It is important to note that there currently exists no specialized enforcement or monitoring mechanism to bring reparation claims in cases of violations of international humanitarian law. However, victims of violations of IHL may be able to bring claims based on IHL rules before different IHRL forums that sometimes incorporate and apply IHL rules where relevant, i.e. during times of armed conflict.[76] Furthermore, victims of IHL violations might be able to obtain remedies through domestic reparation programs, or, albeit rarely, from international and hybrid criminal tribunals.[77]

Reparations under International Criminal Law

International criminal law is the branch of international law designed to hold individuals to account for their responsibility in serious violations of international law, namely war crimes, crimes against humanity, and genocide. The violation of the prohibition of starvation amounts to an **international crime,** with the ICC being the first international tribunal given express jurisdiction over the crime of starvation. Article 8(2)(b)(xxxv) of the Rome Statute penalises starvation as a war crime in IAC "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions."[78] In addition to the war crime of starvation, there are additional or alternative crimes that can capture starvation-related violations. Indeed, one incident may implicate more than one crime, including various war crimes, crimes against humanity and genocide. See Annex V: Starvation within international legal framework and Part 3: A framework for reparation research, Wrongful act.

In the context of ICL, reparations may also play a role in providing redress to individuals who have been directly harmed as a result of the commission of international crimes, including for the commission of the crime of starvation and other related crimes.[79] Under ICL, the responsibility to provide redress is not based on state responsibility but on the responsibility of the individual perpetrator

[71] *Customary IHL: Rules,* Rule 150: 'A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.'; Salmón E, Pérez-León-Acevedo J-P. 'Reparation for victims of serious violations of international humanitarian law: New developments'. International Review of the Red Cross. IRRC No. 919 (2022).
[72] Mwatana for Human Rights & Lowenstein International Human Rights Clinic at Yale Law School. Returned to Zero Report. The case for Reparations to Civilians in Yemen (2022) ('Returned to zero Report'), p.132.
[73] *Customary IHL: Rules,* Rule 150; *Customary IHL: Rules,* Rule 139 applicable in both IACs and NIACs stipulates that '[e]ach party to the conflict must respect and ensure respect for international humanitarian law'; Returned to zero Report, p.131
[74] UN Basic Principles, Principle 15.
[75] E.g. The Ethiopia and Eritrea Commission was tasked with awarding compensation for violations of international humanitarian law; See Evans 2012, pp. 39–43; On 14 November 2022, the UNGA adopted a Resolution recognizing that Russia 'must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts.' UNGA A/RES/ES-11/5 (2022).
[76] Report of the International Law Commission Annex B. Claudio Grossman Guilof. Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law, para.14; Henckaerts, Concurrent Application of IHRL how does law protect in war? Glossary - *Lex specialis*, ICRC.
[77] L. Moffett 'Reparation Options for the War in Ukraine', p.10; For information on the different avenues available see Part 3: A Framework for Reparations Research, Avenues for Seeking Redress.
[78] Rome Statute, Article 8(2)(b)(xxv); In 2019 the Rome Statute was amended to extend this prohibition to NIACs, under proposed Article 8(2)(e)(xix). (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014), Articles 28D(b)(xxvi) and 28D(e)(xvi).) Following the same definition of the crime, the Statute of the African Court of Justice and Human Rights also recognises starvation as a war crime in both IACs and NIACs (Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014), Articles 28D(b)(xxvi) and 28D(e)(xvi).), while the Kosovo specialist Chambers recognizes starvation as a war crime only in IACs. (Law on Specialist Chambers and Specialist Prosecutor's Office. Law No.05/L-053 (´Law on Specialist Chambers and Specialist Prosecutor's Office´) Article 14 1. b. (xxv) ('Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions'.).
[79] C. Evans. 'Reparations for Victims in International Criminal Law'.

of the international crime. Only convicted individuals may become responsible and obliged to make reparations for the harmed caused.

Traditionally, the main focus of ICL was the punishment of perpetrators. To date, reparations have been relatively underprioritized in front of ICL fora. However, the **right to reparations has gradually entered more into focus under ICL**, influenced by international and regional human rights treaties and jurisprudence, as well as by the influence of the UN Basic Principles.[80]

Notably, the adoption of the **Rome Statute** of the ICC represented a significant step forward for the rights and recognition of victims in ICL,[81] becoming **the first international permanent criminal tribunal to reaffirm the right of victims to reparations in cases tried by the Court, and to establish a procedure through which victims could potentially obtain them.**[82] According to Article 75 of the Rome Statute, the Court can order reparations to victims, including restitution, compensation, and rehabilitation[83] (for detailed information about these forms of reparation see Part 2: Forms and standards for reparations).The reparation payments can be made through the convicted person or the trust fund for victims (TFV), which is an independent institution that was created to enhance the ICC's reparative efforts[84] 'for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims'.[85] One trial chamber at the ICC claimed in 2012, that *'[t]o some extent, the success of the Court is linked to the success of its reparations system.'*[86]

Nevertheless, the ability of victims to obtain reparations through the ICC (and other criminal courts and tribunals) is extremely limited, due to the extremely small number of crimes prosecuted, the length of proceedings, and the difficulty and extremely small number of actual convictions obtained. In addition, the scope of eligible beneficiaries for reparations is limited to the victims of the specific crimes for which convictions are secured, which is often a much smaller pool of victims than, for example, may have been harmed by IHRL or IHL violations linked to those crimes. Additionally, Courts' ability to provide reparations can be limited by the lack of resources of the convicted individuals and the limited capacity of the Trust Fund.[87]

For more information on the ICC and the TFV see Part 3: A framework for reparation research, Avenues for seeking redress, and Annex IV: ICC reparation procedure and cases.

Some international and hybrid criminal tribunals have also incorporated reparation functions, although with varying levels of centrality and power. The statute of the **Extraordinary Chambers in the Courts of Cambodia (ECCC**),[88] for example, recognized the right of victims to seek and receive reparations. However, the Chambers' Internal Rules ultimately limited the right of victims at the ECCC to receive only collective and moral reparations.[89] The founding texts of the **Kosovo Specialist Chambers** and the **Special Criminal Court in Central African Republic** both foresee the possibility of granting reparations to victims individually and collectively.[90]

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[80] C. Evans. 'Reparations for Victims in International Criminal Law'. p.1; UN Basic Principles; ICCPR, Articles 2, 9(5), 14(6); CERD, Article 6; CAT, Article 14.
[81] M. Åberg. 'The Reparations Regime of the International Criminal Court. Reparations or General Assistance? (2014), p.5.
[82] C. Evans. 'Reparations for Victims in International Criminal Law'.("Until the adoption of the Rome Statute of the International Criminal Court, the rights of victims in international criminal proceedings were largely marginalised."), p. 1.
[83] Rome Statute, Article 75.
[84] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p. 179.
[85] Rome Statute, Article 79. The TFV is tasked with implementing reparations and providing humanitarian assistance to victims in cases appearing before the ICC. For more information see Part 3: A Framework for Reparations Research, Avenues for Seeking Redress and Annex IV: ICC reparation procedure and cases.
[86] Trial Chamber I, Prosecutor v. Thomas Lubanga Dyilo, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06-2904 ('Lubanga Reparations Decision'), para. 178.
[87] See L. Moffett and C. Sandoval, 'Tilting at windmills: Reparations and the International Criminal Court', Leiden Journal of International Law 34 (2021), 749–769; L. Moffett 'Reparation Options for the War in Ukraine' p.10 para.7.
[88] ECCC, Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on October 27, 2004, (NS/RKM/1004/006) ('ECCC St.').
[89] ECCC 'Internal Rules'; In Cases 001, 002/01 and 002/02, the ECCC awarded different types of 'moral' and collective reparations, such as the compilation of survivor testimonies, publication of statements of apology, measures to commemorate the suffering of the Civil parties, including the construction of memorials, forms of education on Khmer Rouge history and Civil Parties' experiences aimed at guaranteeing non-repetition, and others. For more information see C. Sperfeldt and R. Hughes, *Opinio Juris* Symposium on the ECCC: Extraordinary Experiments in Reparation.
[90] Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, August 3, 2015 ('KSC St.'), Article 22(8) ('In the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order directly against that accused specifying appropriate reparation to, or in respect of, Victims collectively or individually'); Rule 168 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers; Loi n° 18.010 du 02 juillet 2018, portant règlement des procédure et preuve devant la cour penale speciale de la République Centrafricaine, Article 129; See also 'Case-Based Reparations at the Central African Republic's Special Criminal Court'. Gender and International Criminal Law Project. American University Washington College of Law. (2019). The Rules of Procedure and Evidence of the SCC, provide that the Court may order individual and collective reparations. On its first case, and first order for reparations, the Special Court ordered the construction of two wells, two memorials and monetary compensation to victims.

PART 2: FORMS AND STANDARDS FOR REPARATIONS

The present section outlines the different forms of reparation - restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition - that can be adopted to address the harms resulting from starvation and starvation-related violations. It then describes some of the standards for assessing the adequacy of reparations measures.

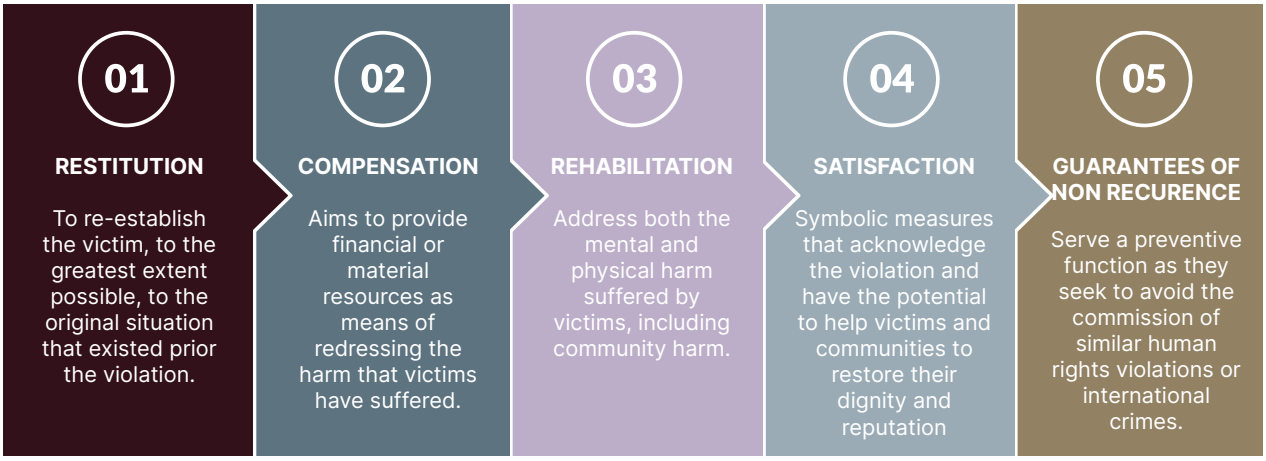
Forms of reparations

Starvation and starvation-related violations can have severe and long-lasting physical, psychological, and socio-economic impacts on individuals and communities. Given the severity of the harm(s), it is crucial that mechanisms or entities awarding reparations adopt a comprehensive set of measures to provide adequate redress to victims.

According to the international framework laid out in the UN Basic Principles, reparations can take different forms, including one or a combination of **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition measures.**[91] The appropriate form(s) of reparation to be awarded in the context of starvation and starvation-related violations should be assessed on a case-by-case basis and consider the following:

a) The **socio-economic** and **legal context in which violations occurred;**
b) The **nature and extent of the harm caused;**[92] **and**
c) The **rights, needs and views of the victims**.[93]

Multiple forms of reparations may be necessary to adequately redress the different harms suffered by victims.[94]


01
RESTITUTION
To re-establish the victim, to the greatest extent possible, to the original situation that existed prior the violation.
02
COMPENSATION
Aims to provide financial or material resources as means of redressing the harm that victims have suffered.
03
REHABILITATION
Address both the mental and physical harm suffered by victims, including community harm.
04
SATISFACTION
Symbolic measures that acknowledge the violation and have the potential to help victims and communities to restore their dignity and reputation
05
GUARANTEES OF NON RECURENCE
Serve a preventive function as they seek to avoid the commission of similar human rights violations or international crimes.

[91] UN Basic Principles, Part IX, "Reparation for harm suffered"; See also CAT General Comment No. 3; HRC General Comment No. 31, paras. 16-18.
[92] *Yakye Axa Indigenous Community v. Paraguay*, Judgment, para. 182 (Reparations "consist of measures that tend to make the effects of the violations committed disappear. Their nature and their amount depend on the damage caused, both at the pecuniary and the non-pecuniary levels.").
[93] UNSG 'Guidance Note Conflict Related Sexual violence', p.15; See Part 2: Forms and standards for reparations, Standards for assessing reparations.
[94] African Court Comparative on the Law and Practice of Reparations, p. 46; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 81.

Restitution

Restitution means to re-establish the victim, to the greatest extent possible, to the original situation that existed prior to the violation.[95] Restitution is often impossible,[96] and sometimes even unsuitable or insufficient. For example, it might be impossible in the sense that no measure can restore someone's life,[97] or in cases of physical injuries that resulted in permanent physical disability. In these cases, other forms of reparation, such as monetary compensation and rehabilitation, should complement or be offered instead of restitution.[98]

Moreover, reparations should aim to be **transformative** and a sole focus on restitution would be insufficient.[99] For example, in the context of starvation, restoring the *status quo ante* for starvation victims that were already vulnerable is undesirable. Reparations should address the vulnerabilities and inequalities that pre-existed and that put victims at risk of starvation.[100]

Some examples of restitution measures in the starvation context include **restoring access to water and food,**[101] facilitating the **return to one's place of residence**,[102] **restoring employment,**[103] **restoring or recognition of citizenship**,[104] **restoring legal rights**, meaning 'the re-recognition of rights that were denied to the person as a result of a human rights violation,'[105] **and returning property or land.**[106]

In the **starvation context**, for example, unlawful attack(s) on fisherfolk might result in multiple harms, including loss of life, physical injuries and destruction of fishing equipment that results in loss of access to crucial food sources, loss of access to areas needed to secure food, and loss of livelihood. Restitution might take the form of providing fishing equipment to those whose equipment was destroyed or allowing them to return to their fishing areas. In another example, a warring party might lay landmines over agricultural land, which might prevent farmers from accessing their source of sustenance and livelihood. One form of restitution might be clearing mines from that agricultural land and allowing farmers to return.

In situations where land and resources were unlawfully seized or exploited, the preferred form of reparation should be restitution. In cases where this is not possible, there should be a provision of similar property or compensation.[107] As property and land play a crucial role in food production, livelihoods, and the overall well-being of individuals and communities, returning them to their rightful owners or providing alternative land or compensation can be an important aspect of addressing starvation and its underlying causes.

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[95] Prosecutor v. Lubanga, Case No. ICC-01/04-01/06, Decision establishing the principles and procedures to be applied to reparations, (ICC Trial Chamber I, Aug. 7, 2012), para.223. ('Lubanga Trial Decision on Reparations Principles'); ICJ 'A Practitioners' Guide' p.159-173; African Commission on Human and Peoples' Rights, general comment No. 4 (2017). The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), para. 36.

[96] U.N. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/22/45, 28 January 2013, para. 55.('Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/22/45').

[97] *Caballero-Delgado and Santana v. Colombia*, Judgment, Reparation and Costs, 29 January 1997, para. 17.

[98] Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/22/45, para. 55.

[99] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 79.

[100] A de Waal, B.Conley. 'What Justice for Starvation Crimes?' *Time for Reparations: A Global Perspective*, edited by Jacqueline Bhabha et al., University of Pennsylvania Press, 2021, pp. 272–90. ('A de Waal and B.Conley. 'What Justice for Starvation Crimes?').

[101] Case *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Judgment,* Merits, reparations and costs, 6 February 2020, paras. 332 ("the Court orders the State, within six months of notification of this judgment, to submit a report to the Court identifying, from among all the individuals who are members of the indigenous communities victims, critical situations of lack of access to drinking water or to food that could endanger their health or their life, and to draw up an action plan establishing the actions that the State will take") ('*Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina,* Judgment'); *Xákmok Kásek Indigenous Community v. Paraguay Judgment*, para.291 ("Thus, the State shall ensure that the area is not deforested, that the sites that are of cultural importance to the Community are not destroyed, that the land is not transferred, and that it is not exploited in such a way as to cause irreparable harm to the area or to its natural resources".).

[102] Case *of the Moiwana Community v. Suriname*, Judgment, Preliminary Objections, Merits, Reparations and Costs, 15 June 2005, Series C No. 124, para. 212 ('*Moiwana Community v. Suriname*, Judgment'); *Massacres of El Mozote and Nearby Places v El Salvador*, Judgment, Merits, reparations and costs, 25 October 2012, Series C No. 252, para. 345 ('*Massacres of El Mozote and Nearby Places v El Salvador*, Judgment').

[103] *Malawi African Association and Others v. Mauritania*, Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, African Commission on Human and Peoples' Rights, 11 May 2000, Recommendation 4; *Baena-Ricardo et al. v. Panama*, Judgment, Merits, Reparations and Costs, 2 February 2001, para. 203.

[104] Report of the Working Group on Enforced or Involuntary Disappearances, General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc E/CN.4/1998/43, para. 75.

[105] ICJ 'A Practitioners' Guide', p.167.

[106] *Xákmok Kásek Indigenous Community v. Paraguay Judgment,* paras. 281-290.

[107] African Court Comparative on the Law and Practice of Reparations, p. 48.

Compensation

It is often challenging for restitution measures to fully redress the harms suffered by victims. Practitioners are encouraged to advocate for a **comprehensive** set of reparations including, where relevant and desired by victims, compensation. When compensation is provided as reparation, compensation should provide financial or material resources that redress the harm that victims have suffered.[108] According to the UN Principles:

> 'Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:
> (a) Physical or mental harm;
> (b) Lost opportunities, including employment, education and social benefits;
> (c) Material damages and loss of earnings, including loss of earning potential;
> (d) Moral damage;
> (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.'[109]

There is significant variation in the way reparations programs provide monetary compensation, including the **categories of harm** for which monetary payments are made (e.g. death or personal injury, property damage, loss of earnings, non-material damage), the **amount of payments**, the **methodology used to calculate** the amounts (e.g. based on losses, budget considerations, arbitrarily), and the **disbursement methods** (e.g. lump sum payments or pensions).[110] Thus, practitioners working on reparations cases should conduct a **thorough examination of the specific mechanisms available** to determine what types of monetary compensation, if any, are available and how they are implemented (e.g. criteria for determining eligibility, amount, disbursement methods). Practitioners are also encouraged to **advocate for a gender sensitive approach in the design and delivery of monetary compensation.** For example, attention should be paid to the form in which compensation is provided to women— e.g. lump sum or pension.[111]

In the **starvation context,** farmers, for example, could be compensated with monetary payments to help them obtain new livestock, seeds, tools, or equipment to restart their agricultural activities.

Rehabilitation

As a consequence of starvation and starvation-related violations, victims often suffer significant physical, mental, and social harm. Rehabilitation is a form of reparation that can address both the **mental and physical harm** suffered by victims, including community harm, and has the ability to help them reconstruct their lives and provide transformative opportunities.[112] Rehabilitation measures aim to help victims continue their lives in a dignified way.[113] Rehabilitation can take a range of forms,

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[108] Lubanga Reparation Order, para. 40; As stated by Fabián Salvioli, past Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the provision of compensation "should entail **economic assessments of the damage inflicted on victims**, including loss of earnings or opportunities, and material or moral damage." Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para 49; ICJ 'A Practitioners' Guide', p. 212 ("Compensation must be based on the material loss actually incurred; it must also provide redress for moral damages, which should be assessed in equity").

[109] UN Basic Principles, Principle 20.

[110] Report on Monetary Payments for Civilian Harm in International and National Practice. Amsterdam International Law Clinic and Center for Civilians in Conflict, 2013.

[111] UNSG 'Guidance Note Conflict Related Sexual violence', p. 16-17 ('The payment of lump-sum of compensation must take into account obstacles women may face in accessing and keeping money, as well as the likelihood of money being spent quickly to meet needs of other members of the family or for reasons not necessarily related to the harm suffered, such as the payment of debts (…) On the other hand, a lump-sum payment of compensation may also allow women victims some financial independence in order to begin living elsewhere or away from circumstances that encourage stigmatization, ostracism or dependence on others as a result of the harm they have suffered'); International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.

[112] Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24; See also Contemporary Perspectives on Transitional Justice Issues. Friendly version, p. 16.

[113] UNSG 'Guidance Note Sexual violence', p.18; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 80.

including medical and psychological care, legal and social services,[114] and measures to restore a victim's civic status.[115]

At the very minimum, direct and indirect victims of starvation and starvation-related violations[116] should have **access to medical and psychological services**.[117] The provision of medical services, including psychiatric treatment and psychological counselling, can help starvation victims and their families to overcome the effects of starvation and to improve their quality of life. Rehabilitation could also include setting up and ensuring access to health facilities offering specialized medical care for those suffering from severe and acute malnutrition.

Provision of goods and basic services such as the provision of sufficient potable water, the delivery of food of sufficient quality and quantity to ensure an adequate diet, and installation of sanitation systems might be a key rehabilitation measure in certain contexts.[118] For example, in 2009, the African Commission recommended Sudan to "rehabilitate economic and social infrastructure, such as education, health, water, and agricultural services, in the Darfur provinces in order to provide conditions for return in safety and dignity for the IDPs and Refugees."[119] Moreover, in the case of *Plan de Sanchez Massacre v. Guatemala*, the Inter-American Court of Human Rights ordered the state to provide, among others, the implementation of a sewage system and potable water supply, the establishment of a health centre maintenance and improvement of the road systems.[120]

Rehabilitation measures for starvation and starvation-related violations should also involve access to legal services, education and training,[121] economic rehabilitation, housing and other forms of assistance aimed at helping individuals and communities recover from the harms suffered. Rehabilitation measures can facilitate the aim of ensuring that reparations are transformative.

Satisfaction

Satisfaction as reparation[122] includes a series of symbolic measures that acknowledge the violation and have the potential to help victims and communities to restore their dignity and reputation.[123] The determination of suitable satisfaction measures will depend on the specific circumstances of each case.[124]

In the context of **starvation and starvation-related violations**, there are multiple different satisfaction measures that could make meaningful reparations. Measures of satisfaction, including **victim-centred and well-timed public apologies,**[125] **publication of judgments**[126] and **memorialization,**[127]

[114] UN Basic Principles, Principle 21; See also CAT, Article 14(1) ("each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible"); CRC, Article 39 ('States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim…'); Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/22/45, para. 59-61.
[115] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para. 37; Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para. 50.
[116] *Gomes Lund et al. v. Brazil*, Judgment, para. 269.
[117] For example, see *Case of Barrios Altos v. Perú*, Judgment, Reparations and Costs, 30 November 2001, paras. 42 and 45; *Gomes Lund et al. v. Brazil*, Judgment, Preliminary Objections, Merits, Reparations, and Costs, 24 November 2010, paras. 267-268 ('*Gomes Lund et al. v. Brazil*, Judgment').
[118] See also *Xákmok Kásek Indigenous Community v. Paraguay Judgment*, para. 301.
[119] *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, 279/03-296/05, African Commission on Human and Peoples' Rights, May 2009, para. 229(5).
[120] *Plan de Sánchez Massacre v. Guatemala*, Judgment, para.110.
[121] *Xákmok Kásek Indigenous Community v. Paraguay Judgment*, para. 301. ('provision of the necessary materials and human resources for the school to guarantee the Community's children access to basic education, paying special attention to ensuring that the education provided respects their cultural traditions and guarantees the protection of their own language.').
[122] UN Basic Principles, Principle 22.
[123] African Court Comparative on the Law and Practice of Reparations, p.58; Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para. 51; Evans 2012, p. 45.
[124] Redress, 'Handbook on the Basic Principles', p.38.
[125] For detailed information about the concept, legal framework, and practice of public apologies see Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/74/147, 12 July 2019; See also Contemporary Perspectives on Transitional Justice Issues. Friendly version.
[126] ICJ 'A Practitioners' Guide', p.207-208; *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina,* Judgment, paras. 346-349; Case *Xákmok Kásek Indigenous Community v. Paraguay Judgment,* para. 298.
[127] For more information see A de Waal, 'Truth, Memory, and Starvation', in Bridget Conley, and others'; A de Waal and B.Conley. 'What Justice for Starvation Crimes?, Oxford Academic (2022).

are rare but often important for victims.[128] In the context of starvation and starvation-related violations, victims may be left with a sense of personal shame and humiliation. The different cruelties and indignities endured can result in victims feeling as though they have done something wrong themselves.[129] Acknowledging that the harms suffered were a consequence of the commission of starvation and starvation-related violations (naming the crime), rather than a natural disaster or consequence of war, can help victims and survivors to overcome the shame and humiliation caused by the memory of famine.[130] In addition, inclusion of an accurate **account of the violations in training and in educational material** at all levels[131] helps ensure that tragedies are not forgotten and promote a deeper understanding of the causes and impacts of starvation, preventing such events from happening again.

Another measure of satisfaction that can be meaningful for starvation victims includes **search for disappeared persons and/or recovery of their remains.**[132] In conflict-induced cases of starvation, due to insecurity or sanitary reasons, bodies may have to be disposed in common graves or left unrecovered, leaving relatives unaware of what happened to their loved ones or where they were buried. The search and recovery of remains can be a measure that provides closure, dignity and a sense of justice.

Guarantees of non-repetition/non-recurrence

Guarantees of non-repetition/non-recurrence are forward-looking reparation measures that serve a preventive function as they seek to prevent the commission of similar human rights violations, humanitarian law violations or international crimes.[133] According to the UN Basic Principles, *guarantees of non-repetition* may include a long list of practices.[134]

In the context of starvation and starvation-related violations, guarantees of non-repetition/non-recurrence may include **institutional, administrative, and legal reforms,[135] changes in policies and practices related to food security, improvement of access to resources, as well as human rights education and starvation sensitization campaigns**. For example, a State could develop mechanisms for rapid response to food crises, ensuring timely and effective delivery of humanitarian aid, and strengthen human rights frameworks by integrating the right to food and other related human rights into national legal frameworks and ensuring their protection and promotion.

Standards for assessing reparations

As described above, reparations can cover a wide range of measures. Reparations can be provided, recommended or implemented by a range of actors, including state, a court, a human rights body or other institution.[136] Reparation measures will vary depending on the context, redress avenues available, relevant legal frameworks, available resources, political will and needs of victims. However, several general principles should inform reparation measures and programs. These principles may also be used as standards for assessing the adequacy and effectiveness of existing measures and programs.

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[128] A. de Waal, B Conley. '16. What Justice for Starvation Crimes?' ('The threads of responsibility for famine are thus tangled and obscure. Those in power prefer to blame the weather, Providence, or the victims themselves—for their profligacy in having too many children in defiance of Malthusian precepts of a sustainable population. Victims tend to internalize such accounts and to blame extreme hardship on mismanaged or corrupted relief efforts.').
[129] A de Waal, 'Truth, Memory, and Starvation', in Bridget Conley, and others'; A de Waal and B.Conley. 'What Justice for Starvation Crimes?, Oxford Academic (2022).
[130] A de Waal, 'Truth, Memory, and Starvation', in Bridget Conley, and others'; A de Waal and B.Conley. 'What Justice for Starvation Crimes?, Oxford Academic (2022).
[131] Redress, 'Handbook on the Basic Principles', p.28-39.
[132] Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para.51; *Moiwana Community v. Suriname*, Judgment, para. 208.
[133] UN Principles on Impunity, Principle 35; For detailed information on guarantees of non-repetition see Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015; African Court Comparative on the Law and Practice of Reparations, p. 64; Redress, 'Handbook on the Basic Principles', p.40.
[134] UN Basic Principles, Principle 23; See also ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001, Article 30.
[135] *Moiwana Community v. Suriname*, Judgment, para. 209 ("the State shall adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community"); Case *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina,* Judgment, para. 354.
[136] African Court Comparative on the Law and Practice of Reparations, p.2.

According to the UN Basic Principles, reparations should be **adequate, prompt and effective**, **proportional** to the gravity of the violations and the harm suffered, **full**, **comprehensive**, **transformative**, and include **recognition of harm and acknowledgement of responsibility**.

Reparation measures should also be designed adopting a **victim-centered** approach, tailoring them to the needs of the victim(s) and ensuring victims' participation. Reparations should also be gender-sensitive and provided without discrimination.

By understanding these standards, practitioners can play a fundamental role in advocating, assessing and ensuring that the rights and needs of victims are effectively addressed through reparation measures.[137]

Adequate, prompt and effective

The UN Basic Principles and other human rights instruments note that reparations should be adequate, prompt and effective.[138]

To evaluate what is to be considered adequate, several factors should be considered, namely:[139]

a) The gravity of the violations.
b) Victims' needs and preferences.[140]
c) The potential of the reparations to erase the effects of the violation.

Reparations should be effective, meaning that they should succeed in the intended result of redressing the harm(s) caused to the victim(s).

To be prompt, victims should not have to endure prolonged waiting periods or bureaucratic obstacles to receive reparations. Promptness is crucial to address the immediate needs of the victims and prevent further harm.

Proportional to the gravity of the violations and the harm suffered

According to the principle of proportionality, reparations should be commensurate with the gravity of the violations and the harm suffered.[141] Similar to general principles of civil liability and tortious claims, the essence of reparations is to restore the victim back to the position they were in prior to the violation or abuse occurring. Victims should not be enriched nor further impoverished by reparation measures.[142]

Full and comprehensive

Full reparations provide victims with a **broad range of redress measures** for the harm suffered. As laid out in the UN Basic Principles, full and effective reparations include the forms described above: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[143] Reparations should be comprehensive in the sense that reparations measures should be **complementary to other transitional justice initiatives** and mechanisms such as truth seeking, criminal prosecutions, institutional reform, and other peacebuilding and conflict transformation programmes.[144]

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[137] As recognized by the Human Rights Council, civil society play a fundamental role through its engagement, advocacy and participation in decision making processes, in preventing violations and in addressing their legacy by promoting the right to reparation (A/HRC/RES/42/17, p.3).
[138] UN Basic Principles, para. 11(b); UN Principles on Impunity, principle 32; Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para 46; Belfast Guidelines.
[139] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p. 98-99.
[140] See Annex III: Template questionnaire to assess victims' reparations preferences and understanding of justice.
[141] UN Basic Principles, Principle 15; See Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24 para. 47; Lubanga Reparation Order, para 21.
[142] Case of the *Yakye Axa Indigenous Community v. Paraguay*, Judgment, Merits, Reparations and Costs), Case No. 125, 17 June 2005, para. 182 ('*Yakye Axa Indigenous Community v. Paraguay*, Judgment'); Ntaganda Reparation order, para. 100; Case of *the "Street Children" (Villagrán-Morales et al.) v. Guatemala*, Judgment, Reparation and Costs, 26 May 2001.
[143] UN Basic Principles, Principle 18; An example would be the Iraqi Yazidi Survivor Law, that provides different measures, including compensation, housing, rehabilitation, and memorials.
[144] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para. 9; Belfast Guidelines, Guideline 10; Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para. 47.

Transformative

Reparations should go beyond addressing the immediate harm of the violations; they should also aim to promote structural changes and address the conditions that enabled those violations to occur in the first place.[145]

Transformative reparations for starvation victims would involve addressing the underlying causes of food insecurity and promoting sustainable solutions. For example, in a country that has experienced conflict-induced starvation, transformative reparations could involve increasing the resilience of communities to withstand interruptions to their access to food and other essential items, such as strengthening agricultural infrastructure, or ensuring that humanitarian access is protected and promoted.

Recognition of harm and acknowledgement of responsibility

Obtaining recognition of the harm suffered is often one of the primary demands of victims.[146] For a measure to count as full reparation, it should also be accompanied by an **acknowledgment of responsibility** from the State or the actor(s) responsible for the violation.[147] The acknowledgment of the commission of a wrongful act is important as it recognizes the suffering and harm experienced by victims, recognising them as rights-holders.[148] It can take various forms, including public apologies, official statements or recognition through reparations programs.

This is one of the key features that distinguishes reparation programs from mere condolence payments, amends[149] or development programs.[150]

Victim-centered

Reparations programs should be grounded in a victim-centered approach, meaning that the measures should be tailored to the needs and preferences of victims and designed based on victims' consultation, participation, and accessibility. They should also be non-discriminatory and gender sensitive.

- Tailored to the particular needs of the victim(s)[151]

  Reparation measures should be designed and implemented based on the specific needs and preferences of victims, including recognizing the unique experiences and vulnerabilities of individuals or communities affected by abuses, including starvation and starvation-related

[145] Ntaganda Reparation order, paras. 94 ("Reparations should strive to be transformative in their design, implementation, and impact. They should have a rectification effect, confronting social exclusion by prioritising a participatory process over outcomes and by challenging unequal power relations."); Lubanga Reparation Order, para. 17; Case of *Atala Riffo and daughters v. Chile*, Series, Judgment, Merits, Reparations and Costs, 24 February 2012, para. 267; Case of *González et al. ("Cotton Field") v. Mexico,* Judgment, Preliminary Objection, Merits, Reparations, and Costs, 16 November 2009, para.450 ('Bearing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State . . . the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable'); C. Sandoval, Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition, in R. Duthie and P. Seils (eds.), Justice Mosaics, ICTJ (2017), 166-201; UNSG 'Guidance Note Conflict Related Sexual violence', p.1; Lubanga Reparation Order, para. 34; Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/HRC/14/22, para. 31; Nairobi Declaration, Principle 3(H); Contemporary Perspectives on Transitional Justice Issues. Friendly version, p. 69; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict; For more information also see R. Uprimny Yepes 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice.' Netherlands Quarterly of Human Rights, (2009) Vol. 27/4, 625–647.

[146] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 2012, para.29.

[147] Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24, para. 47; Contemporary Perspectives on Transitional Justice Issues. Friendly version, p. 12; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, , A/69/518, 2014, paras. 62-63.

[148] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 2012, para.30.

[149] Amends and Reparations for Civilian Harm in Armed Conflict, Center for Civilians in Conflict (CIVIC), (2022), p. 7-8.

[150] S. Kasande Kihika and E. Kallweit. 'Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance'. International Center for Transitional Justice, September 2020. ('S. Kasande Kihika and E. Kallweit. 'Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance'), p. 16; Naomi Roht-Arriaza and Katharine Orlovsky. Research Brief. 'A complementary Relationship: Reparations and Development'. ICTJ (2009) ("Development, broadly conceived, is the process by which a society increases the general and individual prosperity and welfare of its citizens."); Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 2012, para.24; Handbook on Civil Society Organizations and Donors Engagement on Reparations. Reparations Responsibility & Victimhood in Transitional Societies.

[151] CAT General Comment No. 3, para.6.

violations. As not all victims experience the same level of harm and do not face the same consequences,[152] this may also include prioritizing certain victims, for example those who are in a particularly vulnerable situation or who require urgent assistance.[153]

- Designed based on victims' consultation, participation, and accessibility

A victim-centred approach requires meaningful **participation and consultation** of victims in the design, implementation, and monitoring of reparation programs.[154]

- Non-discriminatory

Reparations should be provided without discrimination based on factors such as sex, gender, age, religion, ethnicity, disability, or any other grounds.[155] Efforts should be made to ensure that the most marginalized and vulnerable victims have equal access to reparations and that their specific needs and rights are considered. An equal and fair treatment includes equal access to information relating to reparations proceedings.[156]

- Gender-sensitive

Decisions on the design and delivery of reparations (from the reparation process to the forms delivered) should strive to be transformative and not reinforce pre-existing structural inequalities and patterns of gender-based discrimination.[157] This will require care and attention to aspects of reparation programmes and measures that might have gender implications. As one example, offered by OHCHR in a reparation-specific publication, '[s]hort application deadlines will have a particularly negative impact on female victims, as well as some minorities, who frequently require more time to overcome their reluctance to approach justice initiatives as well as official institutions, because they have traditionally been excluded, marginalized or outright abused'.[158]

[152] Contemporary Perspectives on Transitional Justice Issues. Friendly version, p.18.
[153] Lubanga Reparation Order, para. 19; OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes' p. 36 ('Wealthier, more educated, urban victims usually have a higher chance of successfully pursuing reparations litigation in civil courts than poorer, less educated, rural individuals, who may also happen to belong to marginalized ethnic, racial or religious groups').
[154] Contemporary Perspectives on Transitional Justice Issues User. Friendly Version. Special Rapporteur on The Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. January 2022, p. 22 ('Contemporary Perspectives on Transitional Justice Issues. Friendly version'); *See also* Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24', para. 54; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, , A/69/518, 2014, paras-74-80; Rule-of-Law Tools for Post-Conflict States. National Consultations on Transitional Justice, the Office of the United Nations High Commissioner for Human Rights (OHCHR), 2009.
[155] UN Basic Principles, Principle 25; Ntaganda Reparation order, para.42; Lubanga Reparation Order, para. 16; Nairobi Declaration, principle 1(A); UNSG 'Guidance Note Conflict Related Sexual violence', p. 4; ICJ 'A Practitioners' Guide', p. 56-60.
[156] Lubanga Reparation Order, para. 13; Ntaganda Reparation order, para 41; See also UNSG 'Guidance Note Conflict Related Sexual violence', p. 4.
[157] Nairobi Declaration, General principle 3(H); Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/HRC/14/22; UNSG 'Guidance Note Conflict Related Sexual violence', p.5; Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes. Reparation, Responsibility and Victimhood in Transitional Societies (2002).
[158] OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes', p. 17.

PART 3: A FRAMEWORK FOR REPARATIONS RESEARCH

The present section provides guidance on the practical steps practitioners can take to conduct reparations research within the context of starvation and starvation-related violations. Documentation efforts may serve multiple purposes, including establishing the factual basis for reparation claims, feeding into the design of effective reparations programs or mechanisms, raising awareness about the need for reparations, strengthening victims' position in legal and administrative proceedings, and ensuring that the full extent of harm suffered by victims is properly documented and considered.

Investigations conducted for international criminal accountability purposes often aim at:

- **Gathering evidence about the commission of international crimes;**
- **Identifying individual perpetrators of international crimes;**
- **Feeding into prosecutions in front of judicial mechanisms capable of establishing criminal liability.**

For explanation on the investigative standards tailored to investigations of international crimes, see GRC's Starvation Mobile App and Basic Investigative Standards for International Crimes (BIS-KIT) Mobile App.

Investigations conducted for reparations purposes often aim at:

- **Gathering evidence about the commission of internationally wrongful acts;**
- **Identifying the victims of internationally wrongful acts;**
- **Gathering evidence linking the harms that victims suffer to particular internationally wrongful acts;**
- **Gathering evidence documenting the nature and extent of harm suffered by victims.**

In a nutshell - what should be documented?

Practitioners undertaking investigations into starvation and starvation-related violations with the objective of documenting for the purpose of advocating for, or securing, reparations for victims should aim at gathering information about the following:

1) **Internationally Wrongful Act**: Practitioners might need to establish the **occurrence of starvation or starvation-related violations –** for example, the war crime of starvation, the use of starvation as a method of warfare, or ESC rights violations – including by carefully documenting the evidence to substantiate their claims. For detailed information about these legal frameworks refer to Annex IV: Starvation within International Legal Framework.

2) **Victim(s)**: Practitioners will likely need to **identify the victim(s) affected** by these violations, and the impact on the broader community.

3) **Harm(s)**: Practitioners should **assess the nature and extent of harm** endured by the victims, comprehensively documenting the physical, material, and psychological consequences they have suffered. Practitioners should also link these harms with the particular international wrongful act.

4) **Responsible parties**: If feasible and necessary, efforts should be made to **pinpoint those responsible for the internationally wrongful act**, whether they are states, non-state actors, or individuals. Determining who is responsible is important for establishing their liability and their obligation to provide reparations to the victims.

5) **Victims' needs and preferences:** A significant aspect of a practitioner's role in reparations work is comprehending **what would constitute meaningful redress for the victims**. Practitioners should ensure that victims' voices are heard and their experiences acknowledged**.** See ASnnex III: Template Questionnaire to assess victims' reparations preferences and understanding of justice.

6) **Redress Avenues**: Practitioners that are aiming to support victims to claim reparations should map all potential redress avenues available to victims. Understanding the available avenues helps guide the investigation and any subsequent efforts to support victims in seeking reparations.

Practitioners will find a comprehensive set of questions in Annex II, and Annex III, that follow this structure and are designed to offer guidance and structure throughout the research process.

The focus of reparations research and documentation efforts may vary depending on different factors such as the **mandate and capacities** of the practitioner, as well as **the specific avenue** or avenues where victims might seek redress.

Depending on whether there is a **viable avenue** where starvation victims can seek reparation, practitioners may need to adjust their investigative approach accordingly. Reparation programs and mechanisms – e.g., national administrative reparations program, UN bodies, registries, judicial mechanisms, or other formal bodies – normally set **eligibility criteria** based on the violation or crime, the type of victims, the nature of harm, or other factors. In cases where practitioners are supporting victims, particularly if planning to submit claims to an established mechanism, it is imperative that the practitioner seeks information on and then adheres to the body's specific requirements.

In some cases, the available redress avenue might not require a finding of legal liability of a particular actor and practitioners assisting victims may be able to direct their investigative efforts towards gathering evidence about the nature and extent of harm their clients have suffered, without having to identify particular perpetrators or to prove, themselves, the illegality of a particular act.[159] On the other hand, practitioners engaged in advocacy efforts for the promotion of the establishment of a redress mechanism may need to delve into key aspects such as the violations that took place within a specific context, the number of victims affected, their socio-economic backgrounds, the type and extent of harm they have endured, the victims' most urgent needs and preferred forms of reparations, as well as the parties responsible to provide reparations.

[159] For example, in some cases, the responsibility for providing reparations may already be established or evident without the need for further investigation, including when a national redress mechanism has been set up by a particular State that has acknowledged its responsibility for particular wrongs.

As there is no universal model for conducting documentation efforts for reparations purposes, this guide does not offer a one-size-fits-all solution. Rather, it provides a general framework for investigation, recognizing the need for adaptation based on the specific context in which practitioners are working and urging practitioners to consider what does and does not work for them, given their mandate and capacities, the context in which they are working, and their particular goals. In all cases, practitioners should adopt a victim-centred approach to the documentation (discussed in more detail in Part 2**).**

1) Internationally Wrongful Act

As explained in Part 1, the obligation to make reparation arises as a consequence of the commission of an internationally wrongful act (IHL, IHRL or ICL) that has inflicted harm upon individuals, communities, or legal entities. Establishing a right to reparation implies that there has been a violation of the law. Thus, **the wrongful act generally serves as the basis for a reparation claims.**

It is a general principle of international law that a wrongful act triggers an obligation to make reparation.[160] While the UN Basic Principles specifically refer to the redress of gross violations of international human rights law or serious violations of international humanitarian law,[161] the right to reparation is generally understood to arise from **any breach of international human rights law or international humanitarian law**.[162] As described above, certain ICL mechanisms have recognized a right to reparation for individual victims of international crimes.

Practitioners should bear in mind that the relevance of establishing the commission of an internationally wrongful act may vary depending on the avenue through which victims intend to seek or advocate for reparations. Practitioners may need to collect information and evidence of the occurrence of an internationally wrongful act, for example the war crime of starvation or a starvation-related violation. This would likely be the case, for example, if a practitioner was planning to seek reparations through a judicial mechanism or to advocate for a reparations mechanism that links reparations claims to the commission of an internationally wrongful act.

While this Guide focuses on reparation as a remedy for an internationally wrongful act, the term has also been used to describe amends provided to victims through, for example, **national reparations programs** that focus on acknowledging the harm done, without requiring a finding of legal culpability. Victims have also sought support through, for example, **condolence payments and other form of amends**, which usually provide some form of monetary or other support to victims of attacks, but do not involve acknowledgment of wrongdoing.[163] In these cases, generally, victims would only need to prove the harm suffered. While such condolence payments may not satisfy key elements of reparations (including due to the lack of acknowledgement of wrongdoing), practitioners should explore with victims their interest in pursuing such forms of support or assistance, particularly in situations where legal avenues or formal reparations processes may be limited or unavailable.[164] The acceptance of condolence payments should not come with conditions that prevent the pursuit of further accountability or reparation claims.

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[160] *Chorzów, Germany v Poland* Judgment.

[161] The UN Basic Principles included Principle 26 on non-derogation stating that '[I]t is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights and international humanitarian law'. For further analysis see T. van Boven, 'The United Nations UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', p. 2-3. (T. van Boven, 'The United Nations UN Basic Principles and Guidelines') and T. van Boven 'Victims' rights to a remedy and reparation: the United Nations principles and guidelines', p. 32-34.

[162] As clarified by UN Basic Principles, Principle 26 "Nothing in these Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Principles and Guidelines are without prejudice to special rules of international law."; T. van Boven, 'The United Nations UN Basic Principles and Guidelines' p.3.

[163] Belfast Guidelines, Guideline 9 'Making amends'.

[164] E.g. see Condolence payments by the US; 'Backgrounder: US "Condolence" Payments' Center for Civilians in Conflict (2010); J. Naples-Mitchel. 'Under the Pentagon's New Civilian Harm Action Plan, Addressing Credible Cases is a Moral Imperative' Just Security (2023); See also Saudi/UAE-led Coalition condolence payments in Yemen in 'Returned to Zero: The Case for Reparations to Civilians in Yemen'. Mwatana for Human Rights (2022).

Starvation and starvation-related violations as the basis for reparations claims

Starvation under ICL

In the context of a **claim based on the prohibition of deliberate starvation as a method of warfare under ICL (and IHL)**, it will be necessary to demonstrate certain criteria before pursuing accountability or reparations avenues. These include:

- **The conduct took place in the context of, and was associated with, and armed conflict;**
- That the **victim(s) were civilian(s)**;
- That **objects were deprived**, were destroyed, removed, or rendered useless;
- That **these objects were indispensable to the survival of the civilians** seeking the remedy e.g., food, water, humanitarian aid, shelter, or medicine, or other objects indispensable to survival ('OIS'); [This will vary on the situation and victim e.g., in winter shelter and energy may become indispensable, or children will often have distinct needs and reliance upon indispensable objects.] and
- **The deprivation of these objects was aimed at civilians** [e.g., the aim was not to deprive combatants if the conduct of hostilities is conducted in areas where civilians and combatants are co-located e.g., most urban warfare]
- The perpetrator **intended to deprive civilians of OIS**;
- The perpetrator **intended to starve civilians** as a method of warfare;
- The perpetrator was aware of the factual circumstances that established the existence of the armed conflict.

It is important to note that the occurrence of death, suffering or disease due to starvation is not required to satisfy the element of 'intent to starve civilians'.[165] Intent to starve civilians is established when the perpetrator a) engaged in the deprivation with the purpose of denying sustenance to a population including civilians;[166] b) aimed to inflict conditions of life conducive to the starvation of civilians;[167] or c) engaged in the deprivation action in the awareness that the starvation of civilians would be a foreseeable consequence of that deprivation.[168]

In addition to the war crime of starvation, there are **additional or alternative crimes** that can capture starvation-related violations. Indeed, one incident may implicate more than one crime, including various war crimes, crimes against humanity and genocide.

For detailed information about the elements of the starvation crime and additional or alternative crimes, see Annex V: Starvation within international legal framework. See Annex III for a list of suggested questions to guide your investigation to help determine the commission of the **war crime of starvation** by assessing the objective and mental elements of the crime. For detailed guidance on best practices in documentation or investigation for accountability purposes see GRC's Starvation Mobile App.

Practitioners should aim to identify incidents where a wrongful act has limited, restricted or denied the access of civilians to food, water and wider OIS. Examine the **scarcity of water and food in the area under investigation prior to the occurrence of the wrongful act**, **describe the wrongful act** that adversely impacted food and water security, and assess the **food and water scarcity following the occurrence of the wrongful act**.

[165] See Jordash et al. (2019). See also Triffterer et al. (2016), p. 517, mn. 790: 'The only material element required by the elements of crimes is that there is a deprivation of certain objects. This suggests that it is [...] sufficient that civilians are deprived of objects indispensable to their survival, that is, a deprivation that would cause them in the future to starve, without requiring that the deprivation takes its effect over time.'
[166] Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War*, 55 Vand. J. Transnat'l L. 681at 734-739, 740-41.
[167] Bridget Conley, Alex De Waal, Catriona Murdoch, and Wayne Jordash (eds), Accountability for Mass Starvation: Testing the Limits of the Law (OUP 2022), p.115-116.
[168] Bridget Conley, Alex De Waal, Catriona Murdoch, and Wayne Jordash (eds), Accountability for Mass Starvation: Testing the Limits of the Law (OUP 2022), pp.115-116

Different Forms of Starvation

- depriving people of resources they need to survive
- destroying, stealing or blocking humanitarian aid
- attacking water and food sources, sanitation and electrical system
- attacking means of agricultural production
- forcing people to areas with insufficient:
  - food or clean water to stay healthy
  - healthcare services for the sick and injured

Most Vulnerable to Starvation

- young children
- pregnant/nursing mothers
- elderly individuals
- disabled individuals
- farmers
- rural area residents
- poor urban residents
- minority groups

Starvation-related violations (ESCR)

Under **IHRL,** to demonstrate that a person's right to food, adequate water, health, adequate housing or other interlinked fundamental human rights have been violated will require a close analysis of those rights, legal frameworks and jurisprudence.

Generally, with ESCR, as with other human rights, practitioners can monitor if States have complied with their three-fold obligations: ***to respect*** *(*refraining from any violation of ESCR), but also ***to protect*** (preventing third parties from violating ESCR) and ***to fulfil*** the particular ESCR (take necessary measures to realize ESCR).[169]

For example, a violation of the obligation to respect the right to food would include policies or actions that restrict access to food, destroy sources and means to access food, or prevent access to humanitarian food aid during conflict.[170] The obligation to protect requires states to ensure that individuals or non-state actors do not interfere with other people's right to food, such as protecting communities from corporate land grabbing. The obligation to fulfil requires the obligation *to facilitate* by taking positive action to improve peoples' ability to feed themselves and to provide food directly to individuals or groups who are not able to feed themselves.[171]

Another approach practitioners can adopt is to document whether states are complying with their **ESCR core obligations**,[172] e.g. taking every effort to use all available resources, including international assistance, to make sure that every individual in their territory **enjoys at least the essential levels of protection of each ESCR**.[173] As expressed by the CESCR in relation to the right to food, 'Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. In determining which **actions** or **omissions** amount to a violation of the right to food, it is important to distinguish the **inability** from the **unwillingness** of a State party to comply.'[174] In relation to the right to water and sanitation, the CESCR has stated nine

[169] Escr-net; CESCR General Comment 12, para. 15.
[170] CESCR General Comment 12, para.19
[171] Peoples' monitoring Toolkit for the Right to Food and Nutrition. An initiative of the Global Network for the Right to Food and Nutrition, coordinated by FIAN International; CESCR General Comment 12.; K. Y. Cordes, J.D. Fighting for Food: How Human Rights Law Can Help Address Global Hunger. WhyHunger. (2012).
[172] CESCR General Comment 3 The Nature of States parties obligations para.10 ("The Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être."); Maastricht Guidelines on Violations of Economic, Social and Cultural Rights; ESCR-net ("Governments, no matter what level of resources are at their disposal, are obligated to make sure that people living under their jurisdiction enjoy at least essential levels of protection of each of their economic, social, and cultural rights.").
[173] CESCR General Comment 3 The Nature of States parties obligations para.10 ("In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.").
[174] CESCR General Comment 12, para. 17.

core obligations that are binding at all times, except if the State is completely unable to comply due to lack of resources.[175]

For a detailed description of starvation-related violations under the IHRL framework, see Starvation and ESC Rights in Annex V: Starvation within international legal framework.

2) Victims[176]

Reparations are intended to **benefit individuals and communities** who have suffered harm as a result of the commission of a wrongful act.[177] Although there is no universally agreed-upon definition of a "victim", the **UN Basic Principles** set out the **definition of a victim** as:[178]

> persons who **individually** or **collectively suffered harm,** including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the **immediate family or dependants** of the direct victim and **persons who have suffered harm in intervening to assist** victims in distress or to **prevent victimization.**

While the UN Basic Principles provide important guidance, it is important to note that different jurisdictions and avenues may have their own legal frameworks and definitions of victims. Therefore, practitioners need to consider the relevant **legal frameworks and contextual factors** when applying the concept of victimhood for reparation purposes.[179] In fact, **each reparation program** typically establishes specific **criteria to determine the scope of victims** who are eligible to benefit from reparations. The eligibility criteria are designed to identify individuals or groups of victims based on the types of violations they have suffered.[180]

Generally, to grant reparations, redress avenues require the **identification of individual victim(s)**.[181] However, in certain situations such as widespread violations, the identification of individual victims presents several key issues and challenges.[182] In these instances, some human rights bodies, national reparation programmes, and courts may allow the award of reparations to entire communities without the need to identify each victim.[183]

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[175] "(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease; (b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups; (c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household; (d) To ensure personal security is not threatened when having to physically access to water; (e) To ensure equitable distribution of all available water facilities and services; (f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups; (g) To monitor the extent of the realization, or the non-realization, of the right to water; (h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups; (i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation." (CESCR, General Comment 15, E/C.12/2002/11, para. 37 and 41).

[176] While we acknowledge that the term "**survivor**" reflects the agency and resilience of those impacted by crimes and violations, the present Reparations Guide employs the term "victim" for clarity and consistency. "Victim" represents the more commonly used legal terminology to refer to those individuals entitled to reparations. Additionally, not all affected parties may identify as "survivors", and the concept of reparations must also account for "indirect victims" such as family members - the term "victim" encompasses this broader scope. Moreover, this Guide aims to provide a framework for reparations that can be applied across different jurisdictions, many of which may use "victim" as the standard terminology.

[177] UN Basic Principles, Principle 15.

[178] UN Basic Principles, Principle 8; See also Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly Resolution 40/34, 29 November 1985; CPPED, Article 24; See T. van Boven, 'The United Nations UN Basic Principles and Guidelines' p. 3; Belfast Guidelines, Guideline 5.

[179] For example, pursuant to **Rule 85 of the Rules of Procedure and Evidence of the ICC:** "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court (ICC Rules of Procedure and Evidence, Rule 85 (a)).

[180] L. Moffett 'Reparation Options for the War in Ukraine' p.37 ('Eligibility for reparations is often drawn across territorial/spatial, temporal, and personal dimensions.').

[181] For example, to grant individual reparations, the ICC requires the identification of the victim requesting reparations. See, ICC Rules of Procedure and Evidence, Rule 94(1)(a); See also Inter-American Court of Human Rights, Rules of Procedure, Article. 35(1); Optional Protocol to the International Covenant on Civil and Political Rights, Article. 1 (Dec. 16, 1966) ('the U.N. Human Rights Committee may accept communications under the protocol only from "individuals subject to its jurisdiction who claim to be victims of a violation").

[182] See e.g. *Malawi Africa Association and others v. Mauritania*, African Commission on Human and Peoples' Rights, 11 May 2000, para. 79 ('in a situation of grave and massive violations, it may be impossible to give a complete list of names of all the victims').

[183] *Xákmok Kásek Indigenous Community v. Paraguay,* Judgment, Merits, Reparations, and Costs, 24 August 2010, para. 278 ('*Xákmok Kásek Indigenous Community v. Paraguay Judgment*'); *Saramaka People v. Suriname*, Judgment, Preliminary Objections, Merits, Reparations, and Costs, 28 November 2007, paras. 188-89 ('*Saramaka People v. Suriname*, Judgment').

Individual and collective victims, and direct and indirect victims

For reparation entitlement purposes, the term victim is to be interpreted broadly as this term can include individuals who suffered the harm directly or those who have been affected indirectly by the violation.[184] Judicial mechanisms and administrative bodies have identified different **categories of indirect victims**, including family members of direct victims,[185] anyone harmed while attempting to prevent the commission of one or more crimes,[186] individuals who suffered harm when helping or intervening on behalf of direct victims,[187] and others who have suffered harm.[188]

An individual might be a **direct and an indirect victim** at the same time.[189] For example, in an unlawful siege scenario, all members of a household may suffer from starvation, therefore they are direct victims. They can also be indirect victims if, for example, the breadwinner of the house dies and the survivors lose their main source of income.

It is well recognized that both individuals and communities can be harmed.[190] Where feasible, practitioners are encouraged to document **both the individual impact and the broader community impact of starvation and starvation-related violations**, to understand the collective, inter-generational or infrastructure-based harms that may support reparations claims. For example, the attack and destruction of a farm affects not only the owner of the farm as a direct victim, but it can disrupt the local community's access to food.

It is recognized that both **natural** and **legal persons** may qualify as victims entitled to reparations.[191] For example, at the ICC, reparations can be granted to legal entities such as nongovernmental, charitable and non-profit organisations, statutory bodies including government departments, public schools, hospitals, private educational institutes, companies, and others.[192]

See Annex II for a set of questions to support in the identification of victims.

Practitioners should aim at identifying victims and potential beneficiaries of starvation and starvation-related violations:

Practitioners are advised to develop processes to **identify potential victims who may be eligible for reparations** in cases of starvation and starvation-related violations. This process involves gathering information about who was harmed, their relatives and dependents, and the wider community affected by starvation and starvation-related violations. These processes could include conducting **surveys, interviews, field visits to affected communities, or engaging with local civil society, community**

[184] UN Basic Principles, Principle 8; C. Sandoval and M. Puttick "Reparations for the Victims of Conflict in Iraq Lessons learned from comparative practice" Ceasefire Centre for Civilian Rights and Minority Rights Group International November (2017), p.10 ('Reparations for the Victims of Conflict in Iraq Lessons learned from comparative practice'); 'A Practitioners' Guide', p.32; Implementing Victims' Rights A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation, Redress, March 2006, p.16 (Redress, 'Handbook on the Basic Principles'); According to the ICC, **direct victims** are those whose harm is the result of the commission of a crime for which the defendant was convicted, and **indirect victims** are those who suffer harm as a result of the harm suffered by the direct victims (See Lubanga Decision on Indirect Victims, ICC-01/04-01/06-1813, para. 44-49; Katanga Reparations Order, para. 37; Ntaganda Reparation order, para. 34-35). Consequently, it must be established that, "as a result of their relationship with the direct victim, the loss, injury, or damage suffered by the latter gives rise to harm to them". (Lubanga Decision on Indirect Victims, ICC-01/04-01/06-1813, para. 49).

[185] Ntaganda Reparation order, para. 36; Lubanga Reparation Order, para. 6(b); CAT General Comment No. 3, para. 3 (defining "victim" as including "affected immediate family or dependants of the victim"); UN Basic Principles, Principle. 8 ("Where appropriate . . . the term 'victim' also includes the immediate family or dependants of the direct victim"); Katanga Reparations Order, para. 121 ("the concept of 'family' may have many cultural variations and the Court ought to have regard to the applicable social and familial structures"); It is important to note that courts and bodies have developed different approaches to determine whether a particular family member of a direct victim is to be considered a victim, and therefore is entitled to reparations (African Court Comparative on the Law and Practice of Reparations, p. 20-21.).

[186] Ntaganda Reparation order, para. 36.b; See also African Commission General Comment No. 4, para. 17; UN Basic Principles, para. 8.

[187] Ntaganda Reparation order, para. 36.c; Redress, Handbook on the Basic Principles, p. 19 ("It is very common for human rights lawyers or doctors assisting victims of human rights abuses to be targeted."),

[188] Lubanga Reparation Order, para. 6(b); Ntaganda Reparation order, para. 36.d.

[189] Ntaganda Reparation order, para. 39.

[190] UN Basic Principles, Principle 8 (victims include those who have "collectively suffered harm"); CAT General Comment No. 3, para. 3; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly Resolution 40/34, 29 November 1985. ('Basic Principles of Justice for Victims of Crime and Abuse of Power'); Some courts have recognized entire communities as victims This is particularly common in cases concerning indigenous people where large numbers of individuals were affected by the violations. See, e.g. *Saramaka People v. Suriname*, Judgment, paras. 116, 154, 156, 158, 175, 185; *Xákmok Kásek Indigenous Community v. Paraguay Judgment*, para. 278; See also F. Rosenfeld. 'Collective reparation for victims of armed conflict'. International Review of the Red Cross. Volume 92 Number 879. September 2010 ('F. Rosenfeld. Collective reparation for victims of armed conflict'.).

[191] ICC Rules of Procedure and Evidence, Rule 85; Ntaganda Reparation order, para. 31; Rules and Regulations Governing the Registration of Claims Article 5; European Convention on Human Rights, Article 34 (recognising that non-governmental organisations may be victims of a violation).

[192] ICC Rules of Procedure and Evidence, Rule 85 (b); Lubanga Reparation Order, para.8.

leaders or businesses. Practitioners are advised to map the redress mechanisms available, if any, and understand their eligibility requirements for who would qualify as a victim eligible for specific forms of reparations or reparations programmes. By identifying and documenting potential direct and indirect victims, practitioners can help establish victims' **potential eligibility for reparations** and help ensure that reparation measures are comprehensive, inclusive, effective, and tailored to meet victims' needs.

3) Harm(s)

The main purpose of reparations is to acknowledge and repair the harm caused to victims by an internationally wrongful act or omission. As discussed above, reparations should be **proportionate to the harm suffered**[193] by a person or a community, which might include **physical, material,** and **moral harm.**[194]

To support starvation victims to pursue reparations, practitioners are advised to **thoroughly document the broad range of harms suffered by direct and indirect victims of starvation and starvation related violations**:[195] Documenting the harm is crucial as it **serves as evidence of the violations and their impact,** helps establish the **extent of harm** inflicted on individuals and communities, and **demonstrates the need for reparations**. Practitioners should strive for precision and accuracy in gathering information about the **nature and intensity** of the harm as it also helps ensure that reparations are **adequate** and **tailored to the needs of the victims**. Collecting supporting documents, whenever possible, can help develop or corroborate the accuracy of the information already collected.

Another piece of the documentation effort will likely include work to **link these harms to starvation or starvation-related violations**.

Physical harm

Starvation and starvation-related violations may result in the loss of life, as well as in a vast array of short and long-term physical harms. The list below outlines a range of **physical consequences of starvation,** more classically understood as the deprivation of food and water, **which are vast and include**, but are not limited to:

Death, swelling (edema), malnutrition, growth deficiencies, susceptibility to disease due to nutritional deficiencies, infections, lung diseases and long-term health complications and increased co-morbidity factors, decrease in body mass and weight loss, lack of energy, hair loss, hypersensitivity to noise and light, impacting menstruation [stopping it or impacting its regularity], infertility or fertility associated issues, lactating issues [namely an inability to lactate consistently], impotence, stomach problems such as constipation, bloating, and diarrhoea, cognitive impairment, neurological disturbances and memory loss.[196]

In addition to physical harms stemming from deprivation of food and water, starvation and starvation-related violations might cause additional physical harms during their commission. For example, an agricultural worker that steps on a landmine laid around agricultural areas might lose a limb and require an amputation. These sorts of harms should also be considered when practitioners are documenting the harms linked to starvation and starvation-related violations.

Material harm

The harm resulting from starvation extends beyond the immediate loss of life and physical well-being and includes a range of economic and social consequences with short and long-term impacts on

[193] See Part 2: Forms and standards for reparations.
[194] Lubanga Reparation Order, para 10; UN Basic Principles, Principle 8 ('physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights'); African Commission General Comment No. 4, para. 16; CAT General Comment No. 3, para. 3; Katanga Reparations Order, para. 74; Ntaganda Reparation order, para.68.
[195] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law Second Ed. (2017) United Kingdom: Foreign and Commonwealth Office, p.82. ('International Protocol on the Documentation and Investigation of Sexual Violence in Conflict').
[196] See Sinnreich HJ. The Physical, Mental, and Social Effects of Hunger. In: The Atrocity of Hunger: Starvation in the Warsaw, Lodz and, Krakow Ghettos during World War II. Cambridge University Press; 2023:77-90; Understanding the effects of Starvation. The London Centre for Eating Disorders and Body Image (2020).; Bourke CD, Berkley JA, Prendergast AJ. Immune Dysfunction as a Cause and Consequence of Malnutrition. Trends Immunol. (2016).

individuals and communities. For example, victims may suffer from the **loss or damage to property**, including private houses, farms, factories,[197] foodstuffs, crops, livestock, drinking water installations and pipe networks,[198] or from being prevented from accessing agricultural areas. Practitioners are strongly encouraged to gather information about damage of civilian objects and the impact of their destruction on the wider community.

Material harm also includes the **loss of earnings and earning potential, unpaid wages or salaries**, [199] **expenses**, such as those arising from legal or other experts, medical services, psychological and social assistance, transport and funeral services,[200] **lost opportunities,** including employment, education and social benefits, as well as **loss of status.**[201] For example, where a farmer becomes malnourished as a result of conflict-driven food insecurity, they may experience loss of physical strength to work their fields and harvest their crops, depriving them of the income generated by selling their yield. At the same time, the farmer could incur medical expenses when seeking treatment of malnutrition-related disease. Meanwhile, neglect of the land could deplete the soil of active nutrients, leading to a sustained decline in crop yields and a corresponding reduction of the farmer's earning potential in the longer run. The loss of income, earning potential and the expenses incurred by the farmer would each amount to a material harm to the farmer.

Moral harm

Reparations also consider moral, psychological and non-material harms, i.e. the damage resulting in physical, mental, and emotional suffering.[202] Starvation victims often experience both physical changes and changes to their psychological well-being. Some examples of mental harm include:

- Trauma, depression, and mental illnesses.[203]
- Difficulties in controlling aggressive impulses.[204]
- Psychological suffering experienced due to the loss of a family member[205]
- Social harm or status: this can include difficulties socializing within their families and communities,[206] stigma, damaged reputation or divorce or loss of marriage opportunities.[207] This can be of particular relevance in the context of widespread or prolonged starvation.

Finally, **indirect damage** is the material or moral injury caused by the death or damage suffered by a relative of the victim.[208]

Note to practitioners: Under the Rome Statute, the war crime of starvation does not require proving that civilians actually starved or were harmed or died as a result of a perpetrator's conduct - such consequences are not a material element of the crime. However, evidence of harm will be relevant if pursuing a reparation order. Thus, although the harm caused is not an element of the crime of starvation, some form of harm would be necessary to pursue reparations.

Practitioners should aim at documenting the various forms of harms suffered by victims:

Practitioners must develop effective strategies to document and ensure an accurate assessment of the nature and intensity of the harms endured by individuals affected by starvation and starvation-related violations. This assessment is crucial for determining and advocating for appropriate reparations that adequately address the damages and losses suffered by a diverse range of victims.

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[197] Lubanga Reparation Order, para. 40.c.
[198] *Customary IHL: Rules*, Rule 54; UN General Assembly, 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict', UN Doc A/HRC/12/48 (15 September 2009), paras, 957, CESCR General Comment No. 15, para. 44.
[199] Lubanga Reparation Order, para. 40.c.
[200] Lubanga Reparation Order, para. 40.e; See also *Loayza-Tamayo v. Peru*, para. 129 (d); *Barrios Altos v. Peru*, para. 42.
[201] Lubanga Reparation Order, para.. 40.d.
[202] Lubanga Reparation Order, para 40.b; *Plan de Sánchez Massacre v. Guatemala*, Judgment, Reparations, 19 November 2004, paras 80-89, 117 ('*Plan de Sánchez Massacre v. Guatemala*, Judgment'); *Aksoy v Turkey* Judgment, para. 113.
[203] Lubanga Reparation Order, para. 58.a.ii
[204] Lubanga Reparation Order, para. 58.a.vii
[205] Lubanga Reparation Order, para. 58.b.i
[206] Lubanga Reparation Order, para. 58.a.vi
[207] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict p. 82.
[208] Lubanga Reparation Order, para. 10 ('The harm does not necessarily need to have been direct, but it must have been personal to the victim.').

If pursuing reparations from a specific mechanism, depending on the mechanism available to victims,[209] practitioners are encouraged to gather and store information based on different categories of damage as defined by the mechanism in question. Various entities may have specific procedures, claim categories, categories of damages, and forms for submitting reparation claims.[210] Thus, practitioners working with victims should familiarize themselves with the specific procedures, requirements, and forms of relevance to the particular mechanisms. Practitioners are encouraged to gather and store the information according to the categories of damage recognized by the relevant mechanisms.

The sets of questions in Annex II can serve as a framework for interviews to comprehensively grasp the nature and extent of harm endured by victims.

4) Responsible parties

Identifying the responsible parties for starvation and starvation-related violations can be crucial for practitioners supporting victims' reparations efforts. This information can affect the strategy and approach for seeking reparations and can help determine the available redress mechanisms.

The key actors who may be responsible for internationally wrongful acts that caused harm to victims and thus have obligations to provide reparations include **States, non-state actors** and **individuals**, each discussed in more detail below.[211]

In some cases, the responsibility for providing reparations may already be established or evident without the need for further investigation. For example, when a national redress mechanism has been set up by a particular State that has acknowledged its responsibility for particular wrongs, harms, or to certain victims, or when an international or regional court has already made a determination regarding the responsible party for the violations and their obligation to provide reparations (E.g., ICC Reparations orders). However, in contested cases or situations where the responsible party is not clearly established, practitioners may need to investigate and analyse the evidence to identify any entities, organizations, or individuals who may have played a role in the violation and/or have a legal obligation to provide reparations.

See Annex II Template guide for reparations-oriented research when documenting the war crime of starvation.

States

As explained in Part 1, under international law, **states have a legal obligation to provide reparations to individuals or communities affected by their internationally wrongful acts**.[212] This obligation derives from the well-established duty of states to provide remedy to victims of IHRL and IHL violations.[213]

[209] See Part 3: A framework for Reparation research, Avenues for seeking redress.
[210] For example: The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNROD) was established to document and assess damages caused by the construction of the Israeli wall in the occupied Palestinian territory. Victims can submit claims for damages related to land, property, and livelihoods affected by the construction. The UNROC has its own procedures and forms for victims to submit their claims; See also Experts Report on Reparations for The International Court of Justice. Case Concerning *Armed Activities on the Territory of the Congo*, 19 December 2020; **The United Nations Compensation Commission** (UNCC), established in 1991 by the UNSC Resolution 687, had a mandate to accept, process, decide on and pay compensation to successful claimants who suffered losses as a result of the Iraqi invasion and occupation of Kuwait; L. Moffett 'Reparation Options for the War in Ukraine' p.17-18, para.23 ('The Commission categorised claims into six categories (A-F**). Category A** dealt with claims for those who had to leave Kuwait or Iraq during the invasion**; category B** for serious personal injury or death of family member; **category C** had 21 headings for loss including personal injury, property damage and loss of income that were less than $100,000; **category D** were for nine loss types that amounted to over $100,000; **category E** for business losses, such as for earnings, whether privately or publicly owned corporations; **category F** losses, damage or injury to government and international organisations, including environmental damage and damage to consular and embassy property.' "The claims for individuals in Categories A-D set out different evidential requirements based on the size and violation being claimed."); For more information see David D. Caron and Brian Morris. The UN Compensation Commission: Practical Justice, not Retribution. EJIL (2002), Vol.13 No.1, 183-199; Monetary Payments for Civilian Harm in International and National Practice. Amsterdam International Law Clinic commissioned by Center for Civilians in Conflict, (2013) ('Monetary Payments for Civilian Harm in International and National Practice').
[211] Belfast Guidelines, Guideline 2.
[212] Belfast Guidelines, Guideline 2; UN Basic Principles 15–17; Human Rights Committee General Comment No. 31, paras. 15-17.
[213] International legal standards underpinning the pillars of transitional justice. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli. 10 July 2023, para. 46 ('Special Rapporteur Transitional Justice Report 2023, A/HRC/54/24'); T. van Boven, 'The United Nations UN Basic Principles and Guidelines', p. 3.

States also have an obligation to **ensure victim's rights**, including to respect, protect, and fulfil victims' right to an effective remedy, including reparations. This responsibility extends to violations committed by **individuals or non-state actors within the jurisdiction of the State**. This responsibility encompasses situations where the State is not responsible for the violations, as well as situations where the State may be complicit in the violations or has failed to prevent, protect, or investigate the violations adequately.[214] Moreover, States must ensure **the implementation of reparation judgments** and may **establish programs to provide reparation** to victims.[215]

Non-State Actors

While the primary responsibility for upholding human rights and providing reparations lies with states, **there is an increasing recognition that non-state actors**, such as armed groups, corporations, or other private entities, may be held responsible for human rights violations and **have a responsibility to provide reparations** to the victims of their internationally wrongful acts.[216] Truth commissions, commissions of inquiry, UN bodies and other mechanisms have also emphasized that non-State actors should provide reparations for their internationally wrongful acts.[217]

The issue of **non-State actors' responsibility** was raised in the discussions and negotiations of the UN Basic Principles, particularly in relation to groups exercising effective control over a certain territory and its people, as well as in relation to business enterprises exercising economic power.[218] The **UN Basic Principles incorporated the following provisions:**

- **Principle 15** states that where 'a person, a legal person, or other entity is found liable for reparation for a victim, such party should provide reparation to the victim or compensate the state if the state has already provided reparation to the victim'.[219]
- **Principle 3 (c)** provides that a State should provide equal and effective access to justice, 'irrespective of who may ultimately be the bearer of responsibility for the violation'.[220]

Non-State actors obliged to provide reparations can include **non-state armed groups (NSAG)** and **corporations**,[221] for example, businesses directly participating in hostilities or supplying key materials to the parties to the conflict.[222]

There have been instances where NSAGs have been held responsible or have voluntarily acknowledged their responsibility in providing reparations for human rights violations. Some examples include peace

[214] Belfast Guidelines, Guideline 2; UN Basic Principles, Principle 15; Redress, Handbook on the Basic Principles, p. 16-17; For detailed analysis see C. Rose, 'An Emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors', 33 Hastings International and Comparative Law Review (2010), 307-344.
[215] UN Basic Principles, Principle 16; Promotion of truth, justice, reparation and guarantees of non-recurrence Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019, paras. 31–37, 74, 84-85. ('UN Doc. A/HRC/42/45').
[216] Belfast Guidelines, Guidelines 3-4; For a detailed discussion see e.g. E. Heffes and B. E. Frenkel 'The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules' p. 65-70; L. Moffett, 'Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda', in N. Gal-Or, C. Ryngaert & M. Noortmann (eds), *Responsibilities of the Non–State Actor in Armed Conflict and the Market Place. Theoretical Considerations and Empirical Findings* (2015), 323, 324-325; L. Moffett. 'Violence and repair: The practice and challenges of non-State armed groups engaging in reparations'. International Review of the Red Cross. Cambridge University Press (2020), 102 (915), 1057–1085; O. Herman. 'Beyond the state of play: Establishing a duty of non-State armed groups to provide reparations' International Review of the Red Cross. Cambridge University Press (2020) No. 102 (915), 1033–1056.(O. Herman 'Beyond the state of play: Establishing a duty of non-State armed groups to provide reparations').
[217] Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors, 25 February 2021; See e.g. UN General Assembly A/RES/70/169 (2016) para.6 ('calls upon non-State actors, including business enterprises, both transnational and others, to comply with their responsibility to respect human rights, including the human rights to safe drinking water and sanitation, including by cooperating with State investigations into allegations of abuses of the human rights to safe drinking water and sanitation, and by progressively engaging with States to detect and remedy abuses of the human rights to safe drinking water and sanitation.'); UN Doc. A/HRC/42/45, para. 95; Guatemalan Commission for Historical Clarification, Guatemala Memory of Silence: Conclusions and Recommendations, 1999, p. 49 para. 3 and p. 52 para. 23; Sierra Leone Truth and Reconciliation Commission, Witness to Truth, Vol. 2, 2004, Ch. 3, p. 182 paras. 429–432 and p. 198 para. 518; Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/22/59, 5 February 2013, para. 177(d).
[218] T. van Boven, 'The United Nations UN Basic Principles and Guidelines', p.3.
[219] UN Basic Principles, Principle 15.
[220] UN Basic Principles, Principle 3.
[221]For more information on business responsibility see: UN Guiding Principles on Business and Human Rights (UNGPs); C. Methven O'Brien. 'Business and Human Rights. A handbook for legal practitioners'. Council of Europe, (2018), Section 3.1; European Union Agency for Fundamental Rights 'Business and Human Rights – Access to Remedy' (2020).
[222] Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/50/40/Add.4, 8 June 2022; L. Moffett 'Reparation Options for the War in Ukraine' p.11.

agreements concluded between states and armed groups.[223] However, holding NSAGs responsible to provide reparations is not an easy task - challenges may include NSAGs having limited organizational capacity and resources; NSAGs ceasing to exist in the aftermath of a conflict; and/or NSAGs being unwilling to accept responsibility.[224] In practice, the capacity and willingness of non-state actors to provide reparations for starvation and starvation-related violations might differ significantly across groups. Even when NSAGs lack the resources to provide economic compensation to the victims, they can still provide **symbolic forms of reparations,**[225] such as public apologies or guarantees of non-recurrence.[226]

Individuals

In recent years, the question of individuals' duty to provide reparations has been addressed in the statutes of international and hybrid criminal tribunals.[227] With the expansion of ICL, individual perpetrators who have committed or participated in a crime may also bear responsibility for providing reparations.[228] This can include individuals who have committed starvation crimes.

Reparation orders under ICL are made only against a convicted person.[229] As expressed by the ICC, 'Reparation orders are intrinsically linked to the individual whose criminal liability is established in a conviction and whose culpability for the criminal acts is determined in a sentence'.[230] The ICC has also established that the focus should be 'the extent of the harm caused and the cost to repair such harm, regardless the mode(s) of liability for which the person was convicted'.[231]

Based on the investigation findings, practitioners could explore legal avenues to hold responsible perpetrators accountable and ensure the provision of reparations. This may involve initiating legal proceedings, filing complaints with relevant international bodies or engaging in advocacy efforts.

See below mapping avenues for seeking reparations for an overview of criminal and hybrid courts that may provide reparations for victims of starvation crimes.

5) Victims' needs and preferences

Reparations are meant to address the harm suffered by victims. As such, victims' needs and preferences should be of significant interest and concern to practitioners seeking to support victims to document harms for the purpose of seeking or claiming reparations.

There are multiple ways to listen to, learn and incorporate victims' needs and preferences into reparations research. This Guide focuses on the potential value of a victim needs assessment, which is the process of identifying and evaluating the needs of individuals who have experienced harm, trauma, or victimization as a consequence of starvation or a starvation-related violation. It involves **gathering information directly from victims to understand what reparations mean to them, what are their needs, and what form of reparations they would prefer.** Depending on the practitioner's role and capacities, this could be achieved through engaging directly with the victims with whom the practitioner is working and collecting this information directly. Alternatively, practitioners can consult larger surveys carried out by other community or group-led reparations initiatives for these purposes.

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[223] E.g. Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan on the Basis of the Doha Document for Peace in Darfur, 6 April 2013, Art. 17, para. 43. ; Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Art. 9(2) ; Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera (Colombian Peace Agreement), 12 November 2016, pp. 127–130.
[224] O. Herman 'Beyond the state of play: Establishing a duty of non-State armed groups to provide reparations' p.1045; E. Heffes and B. E. Frenkel 'The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules' p.66.
[225] E. Heffes and B. E. Frenkel 'The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules' p. 68.
[226] For practical information on how NSAGs can engage on reparations see L.Moffett Handbook 'Engaging Non-State Armed Groups on Reparations' Reparations, Responsibility & Victimhood in Transitional Societies. Queen's University Belfast.
[227] E.C Gillard, 'Reparation for violations of international humanitarian law'. IRRC September 2003 Vol. 85 No 851 p.545.
[228] L. Zegveld. 'Victims' Reparations Claims and International Criminal Courts Incompatible Values?' Journal of International Criminal Justice 8 (OUP 2010), 79-111, p. 85-86 (L. Zegveld. 'Victims' Reparations Claims and International Criminal Courts Incompatible Values?'.
[229] Summary of the Reparations Order. The Prosecutor vs. Bosco Ntaganda, p.11.
[230] Lubanga Reparation Order, para 20.
[231] Summary of the Reparations Order. The Prosecutor vs. Bosco Ntaganda. 8 March 2021, p.11. The ICC Chamber found Mr Ntaganda liable to repair the full extent of the harm caused to the direct and indirect victims of all crimes for which he was convicted, regardless of the different modes of liability relied in the conviction and regardless of whether others may have also contributed to the harm.

Victims' needs assessments for reparation purposes can be conducted through various methods and incorporate varying degrees of detail. They can take the form of surveys, interviews, focus groups, town halls, and other participatory mechanisms. These approaches allow for gathering first-hand information from the victims, enabling a comprehensive understanding of their experiences, the harm they have suffered, and their specific needs for redress.

Surveys can be used to collect quantitative data and obtain a broader perspective, while interviews and focus groups may provide an opportunity for in-depth qualitative insights and personal narratives. In the course of these assessments, practitioners should be attentive to the diverse range of potential victims and factors such as gender, age, socio-economic background and cultural context.

See Annex III for a Template questionnaire to assess victims' reparations preferences and understanding of justice to be used in interviews or focus groups.

Vulnerable victims and marginalized groups

Practitioners should pay attention to documenting the experiences of vulnerable victims and marginalized groups to address their specific circumstances.[232] Since not all victims experience the same level of harm or suffer the same consequences,[233] 'priority may need to be given to certain victims, who are in a particularly vulnerable situation or who require urgent assistance'.[234] Some of the traditionally marginalized or vulnerable groups may include: women and girls[235] (see below Gender-Specific considerations), victims of sexual and gender-based violence (SGBV),[236] children,[237] (see below Children-Related considerations), persons with disabilities,[238] ethnic or religious minorities,[239] indigenous peoples,[240] members of LGBTQ+ community,[241] refugees or IDPs.[242]

Gender-Specific Considerations

Practitioners must maintain awareness of gender-related considerations when documenting starvation and starvation-related violations in the context of securing reparations for victims.

Gender constructions and (perceived) gender roles have a direct impact on victims. The stigma and trauma arising from starvation often hits men and women differently.[243] For instance, men in one community may report shame and guilt associated with their inability to provide for their family, whereas a similar feeling could be expressed in another community by women (rather than men) if their traditional primary responsibility is to prepare food.[244] Attention should be paid to the social situation of men and women in the specific community subject to the investigation, while making an effort to notice and discount any of the investigator's own existing preconceptions or assumptions.

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[232] Ntaganda Reparation order, para.42; CEDAW, Article 4.
[233] Contemporary Perspectives on Transitional Justice Issues. Friendly version, p.18.
[234] Lubanga Reparation Order, para. 19; OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes' p. 36 ('Wealthier, more educated, urban victims usually have a higher chance of successfully pursuing reparations litigation in civil courts than poorer, less educated, rural individuals, who may also happen to belong to marginalized ethnic, racial or religious groups').
[235] Nairobi Declaration.
[236] Nairobi Declaration; Contemporary Perspectives on Transitional Justice Issues. Friendly version, p.20; Reparations Are Affordable: Pathways to financing reparations owed to survivors of conflict-related sexual violence. Global Survivors Fund (2023); Kinshasa Declaration On the Rights to Reparation and Co-creation of Survivors and Victims of Conflict-Related Sexual and Gender-Based Violence (2021); S. Gilmore, J. Guillerot and C.Sandoval. Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes. Reparation, Responsibility and Victimhood in Transitional Societies (2002).
[237] See, e.g. UN Human Rights Council Resolution 28/19 'Rights of the child: towards better investment in the rights of the child' UN doc. A/HRC/RES/28/19, UN Human Rights Council Resolution 25/6. 'Rights of the child: access to justice for children' UN doc. A/HRC/RES/25/6
[238] Committee on the Rights of Persons with Disabilities. CRPD/C/5 Guidelines on deinstitutionalization, including in emergencies (2022); Contemporary Perspectives on Transitional Justice Issues. Friendly version, p.11.
[239] United Nations High Commissioner for Human Rights Report A/HRC/47/53. Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers
[240] Human Rights Council Report of the Expert Mechanism on the Rights of Indigenous Peoples Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation Report of the Expert Mechanism on the Rights of Indigenous Peoples. A/HRC/EMRIP/2019/3/Rev.1
[241] For more information see Gonzalez-Salzberg DA. 'Queering Reparations Under International Law: Damages, Suffering, and (Heteronormative) Kinship'. *AJIL Unbound*. (2022); 116:5-9.
[242] Contemporary Perspectives on Transitional Justice Issues. Friendly version, p.19 ("Refugees, migrants and internally displaced persons are often found in especially vulnerable situations after conflict or repression"); Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), UN Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2005/17, June 2005.
[243] This Guide adopts the dichotomy of male/female. This does not represent a denial of other genders and is only because the current discussion is within the Rome Statute framework, which, for the time being, only recognises male and female in the context of gender-based violence.
[244] Oxfam Practical Guide on Food Scarcity and Famine, p. 4.

Attention should be paid to the experience of women and girls. Mothers could feel guilty for not being able to breastfeed their children because of their own malnutrition or psycho-social sufferings. Women and girls in many communities do not have equal access to the agricultural fields, medical centres or humanitarian aid. Some communities practice '**gender preferencing**' in distribution of food, which might leave women and girls with less or no food during periods of food scarcity.[245] **Cultural restrictions** could impede or discourage a woman or a girl from travelling alone in the absence of her husband/ father or a male relative – a restriction that may tighten in wartime when male members of the family are involved in combat or unavailable.[246] Checkpoints, curfews and closures of public roads can delay or altogether prevent women and girls from reaching hospitals or local markets.[247] When local markets become unavailable or close, women and girls may be required to travel long distances to fetch water, fuel and food in fields or forests. Such journeys add additional safety concerns, including possible exposure to crimes of sexual exploitation, rape, abduction, etc.[248]

Documentation methods that fail to adequately capture the unique experiences of women, girls and other marginalized groups could lead to reparations that are not tailored to victims' needs and to their underrepresentation in reparations programs. To ensure equitable access, a gender-sensitive approach is crucial throughout the reparations process. For instance, the forms of monetary compensation, such as lump-sum payments or pensions, should align with women's preferences and socioeconomic realities, which may include obstacles to accessing and retaining money (e.g. lack of access to bank accounts), as well as tendencies to prioritize the needs of their families over their own.[249] Additionally, when calculating lost earnings and earning potential, practitioners should consider the unpaid labour performed by some women at home.[250] In sum, by adopting a transformative, gender-sensitive framework, reparations efforts can work to address pre-existing structural inequalities and patterns of gender-based discrimination, rather than reinforce them.[251]

Child-Related Considerations

Periods of prolonged conflict and starvation are known to disproportionately affect children. They are particularly vulnerable to malnutrition, stunted growth, and various disorders affecting their day-to-day functioning, some of which would cast a long shadow on their long-term health.[252] Given their unique dietary and nutritional needs, it is impossible to expect a comparable degree of flexibility from children to that from adults when access to food, especially baby food, is obstructed. Children who are less or not at all self-sustaining are highly reliant on care, for which both the facilities and the caretaker are indispensable. As such, attacks on hospitals or feeding centres would significantly affect children's wellbeing even when they, themselves, were not the primary victims. In other words, crimes affecting children should not be reduced to crimes committed directly against children.

Child-sensitive reparations and reparations investigations should be grounded in the following principles: principle of '**the best interest of the child**', '**non-discrimination**', '**right to life, survival and development**', and their '**right to be heard**'.[253]

'The views of child victims are to be considered when decisions about reparations that concern them are made, bearing in mind their circumstances, age, and level of maturity'.[254] Children should not only

[245] ICRC, Addressing the Needs of Women Affected by Armed Conflict, p. 50
[246] ICRC, Addressing the Needs of Women Affected by Armed Conflict, p. 43.
[247] ICRC, Addressing the Needs of Women Affected by Armed Conflict, p. 43.
[248] ICRC, Addressing the Needs of Women Affected by Armed Conflict, p. 54.
[249] UNSG 'Guidance Note Conflict Related Sexual violence', p. 16-17; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.
[250] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.
[251] Nairobi Declaration, General principle 3(H); Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo, A/HRC/14/22; UNSG 'Guidance Note Conflict Related Sexual violence', p.5; Beyond Silence and Stigma: Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes. Reparation, Responsibility and Victimhood in Transitional Societies (2002).
[252] See, e.g., L.H. Lumey et al., 'The Dutch Famine Birth Cohort Study: Design, Validation of Exposure, and Selected Characteristics of Subjects After 43 Years Follow-Up' (1993) 7(4) Paediatric Perinat Epidemiol 354. This historical study follows Dutch women born before, during and after the 1944-45 famine (*Hongerwinter* or Hunger Winter), where the Nazi Germany, as a retaliation to a Dutch railway strike aimed at helping the Allied invasion, stopped food from reaching the west of the Netherlands and flooded huge area of the farmlands during an unusually harsh winter which hit both the transported and natural food supplies. The researchers identified an increased risk of obesity, heart diseases, diabetes and other non-communicable diseases in people who suffered.
[253] ASF et al.'s Observations, ICC-02/04-01/15-1971, para. 32; Ongwen Reparation Order, para.81.
[254] Ongwen Reparation Order, para. 85; OTP- ICC Policy on Children (2016), para. 106.

be seen, but also be heard. In order for an investigation into starvation to adequately capture the impact on them, children must be recognised as right-holders on their own.[255]

Children have an individual right to reparation that is independent from their parents. For example, children born as a result of rape have their own right to reparation separate from their mothers.[256] However, these children remain highly marginalized and their voices remain largely absent.[257] Practitioners should be aware of the challenges that these children might face while seeking reparations.[258]

While investigating for reparation purposes for harms affecting people who were children at the time of the violations or were born as a result of the violations, practitioners should **pay particular attention to gathering information related to:**

- **Harm(s) suffered,** including lost opportunities, loss of social, education and familial opportunities. The consequences of starvation and starvation-related crimes can extend beyond the immediate harm. For example, the destruction of schools or hospitals may deprive children of access to education and medical care, limiting their development and well-being. It is also necessary to take into account the different impact of the violations on both boys and girls.[259]
- **Appropriate measure to redress harm(s):** Practitioners should be mindful that children-related reparations play a crucial role in acknowledging the specific harm suffered by children, including the loss of their life plan. Some appropriate measures could include the reintegration of the child into their community, the re-construction of schools and the provision of health care.

The **best interest of the child** should be the guiding principle while conducting this research. Practitioners need to pay particular attention in their interaction with children by **adopting a child-centered approach.**[260] This entails a continuous evaluation of measures that prioritize the protection of a child's physical, psychological, and emotional well-being and safety.[261]

Moreover, practitioners have a responsibility to ensure that child victims and survivors, as well as their parents, guardians, and legal representatives are **fully informed about the investigation procedures, including the purpose, scope and expected outcomes.**

6) Avenues for Seeking Redress

Mapping available avenues for seeking reparation is a key aspect of reparations research. Despite the increasing recognition at the normative level that victims have a right to reparation, the reality is that most victims of IHRL and IHL violations, and victims of international crimes, do not receive any form of redress.[262]

In many cases, there may be no existing fora through which victims can seek redress for harms that occurred as a result of an unlawful act. In such situations, practitioners may be documenting for the purpose of advocating for reparations or for establishing a particular type of reparation mechanism. In other cases, there may be some fora through which victims could claim redress or at least claim acknowledgment of their right to redress (for example: in front of a fora that can make a finding of wrongdoing but not order redress).

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[255] Convention on the Rights of the Child ('CRC'), Article 12; See UN Committee, General Comment No. 12 (2009): The right of the child to be heard, UN Doc. CRC/C/GC/12, 20 July 2009, para. 16 ('The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests').
[256] Belfast Guidelines, p. 17.
[257] Registry Submissions on Reparations in the Ongwen Case. (2021), para. 7.
[258] Belfast Guidelines, p.17.
[259] Ongwen Reparation Order, para.80.
[260] OTP- ICC Policy on Children (2016) ('This approach appreciates the child as an individual person and recognizes that, in a given context, a child may be vulnerable, capable, or both'), para. 22.
[261] OTP- ICC Policy on Children (2016), para. 28.
[262] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para.6 ('Normative progress and even solid practice in some cases should not obscure the implementation gap, which can rightly be said to be of scandalous proportions'); Committee on Legal Affairs and Human Rights. Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future – the question of just and equal redress. AS/Jur (2023), para.12.

Practitioners are encouraged to **map potential redress avenues at the outset of their work**. This is crucial as, if fora do exist, they will likely have different jurisdictional limitations, eligibility rules, and evidentiary requirements. Having clarity at the outset of the research as to whether redress avenues are available and whether research will be oriented towards reparations claims pursued through these avenues is thus critical.

Mapping potential avenues for seeking reparation involves:

- **Researching the relevant legal frameworks at the national, regional, and international levels.** Understand the regulations, treaties, and conventions that address the specific violations suffered by the victim(s).
- **Identifying whether any administrative reparation programs are available that could provide reparation for the specific violations.** If these programs exist, gather information about the eligibility criteria, application processes, and available remedies associated.
- **Identifying whether any judicial avenues for seeking reparation are available.** This may involve examining civil, criminal, constitutional, or human rights laws and procedures. Identify the courts and tribunals (national, regional and international) that may have jurisdiction over the matter, determine the requirements for initiating legal action, and consider whether other challenges exist to bringing claims of this sort in front of these judicial avenues (for example: political interference in the judiciary or risks of retaliation against claimants).
- **Considering other complementary avenues.** Explore complementary approaches to seeking reparation, such as bringing information to truth and reconciliation commissions, registries for damages, or UN mechanisms such as treaty bodies or Special Procedures. Other options for victims seeking support could also include access to humanitarian assistance, development programs, and amends processes.[263]
- **Seeking guidance from experts and organizations specializing in reparations and in the specific type of violation suffered by the victim(s).** These organizations may provide insights into the legal framework, offer advice on potential redress mechanisms, and help identify successful cases that may guide the process.[264]
- **If victims are already identified, consulting victims about their needs and preferences**. Seek information about what, if any, avenues they would like to pursue, and any potential challenges or risks to them from pursuing reparations through any particular avenues.
- **Evaluating the advantages, limitations, and potential outcomes of any available reparation avenues.** Assess factors such as the burden of proof, standing requirements, timeframes, costs, the type of remedies that can be ordered, the likelihood of implementation, and requirements of and potential risks and rewards to victims.

Potential types of avenues for seeking reparation:

Victims seeking reparations for starvation and starvation-related violations may have recourse to various forums and areas of applicable law at the national, regional, and international levels. This section provides a framework for considering the various forums and avenues that may be available.

At the **national level,** avenues for pursuing reparations may include reparations programs, as well as administrative, civil or criminal law judicial procedures that allow for victims to seek reparations.

[263] Belfast Guidelines, Guideline 9 'Making amends'; Amends and Reparations for Civilian Harm in Armed Conflict, Center for Civilians in Conflict (CIVIC), (2022), p. 7-8; S. Kasande Kihika and E. Kallweit. 'Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance'; Naomi Roht-Arriaza and Katharine Orlovsky. Research Brief. 'A complementary Relationship: Reparations and Development'. ICTJ (2009); Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 2012, para.24.

[264] Here are a few organizations and databases that can help in identifying national reparation programs: International Center for Transitional Justice (ICTJ): Global organization focusing on addressing the legacies of human rights abuses and promoting transitional justice. They provide resources, including publications and databases, that map various reparation mechanisms and programs implemented around the world; Reparation Database Queens Belfast University: This database brings together reparations case law and legislation from 10 countries, as well as international jurisprudence, peace agreements and recommendations on reparations in truth commission reports from over 100 countries; REDRESS: International organization focusing on providing legal assistance and advocating for the rights of victims of torture and other serious human rights violations. They offer resources on legal frameworks, casework database, and practical guidance for seeking reparations; Global Survivors Fund (GSF) has undertaken a global study on reparation for survivors of conflict-related sexual violence (CRSV). This Global Reparations Study, or GRS, focuses on the status of and opportunities for reparation for survivors of CRSV in more than 20 countries, with each country having its own report; Global Rights Compliance (GRC): International foundation focused on achieving justice through the innovative application of international law. They provide resources and specific expertise on starvation accountability, including the crime of starvation, food insecurity in conflict and right to food violations. For further information, see our starvation website at starvationaccountability.org/.

At the **international and regional level**, victims may have the choice to resort to a regional human rights system, international or hybrid criminal tribunal, international claim commission and/or registry of damages. Additional mechanisms, such as UN treaty bodies, UN Special Procedures, or truth commissions can serve as international forums where victims can advocate for reparations in cases involving starvation and starvation-related violations.

It is also possible that no formal avenue or forum will be immediately available to victims to seek, claim or receive reparations. This does not preclude research and work on reparations, but would inform the support that a practitioner provides, including what research might be most useful, what strategies most effective, and what possibilities and pitfalls exist for victims interested in seeking and advocating for reparation for harm suffered.

Where multiple avenues for pursuing reparations exist, the most appropriate avenue(s) for seeking reparation will depend on the options available, the circumstances of the case, and victims' needs and preferences. **The availability and effectiveness of a mechanism may depend on the following factors**:

- **Nature of the violation**: The specific nature of the violation, such as starvation-related human rights violations, war crimes, crimes against humanity or genocide, may guide the choice of the appropriate mechanism(s) for seeking redress. For instance, serious international crimes may fall under the jurisdiction of national or international criminal tribunals, while other violations may be addressed through national, regional or international human rights mechanisms. Some violations could fall under the jurisdiction of multiple mechanisms —for example, a crime can be tried before a criminal tribunal and then reparations sought in a civil proceeding or before a human rights mechanism.
- **Type of victim and harm suffered:** The specific harm suffered by particular types of victims might determine whether an avenue for pursuing reparation is available. For example, administrative mechanisms may establish specific categories of damages and/or provide special consideration and support to particular victims (such as children, persons with disabilities, or survivors of gender-based violence). Amends processes might be designed to be available only to victims of certain types of acts or that suffered certain types of harms, for example, suffered a physical injury, lost a loved one, or suffered property damage in an attack.
- **Jurisdiction and applicable legal frameworks:** The legal framework applicable to the country where the violations occurred plays a significant role in determining what avenues might be available for seeking reparation, including the regional and international instruments ratified by the particular State and whether that State has consented to individuals bringing claims in front of regional or international bodies.[265] The *jurisdiction* of a national, regional or international mechanism determines whether that body has the authority to hear a particular type of case, against particular perpetrators, involving particular victims, and what remedies that body can recommend or order.
- **The exhaustion of domestic remedies,** which means attempting to seek remedy, including reparation, in front of national mechanisms, or demonstrating that national avenues for pursuing remedy are not available, might be required to access regional and international human rights mechanisms.[266]
- **Political willingness and resources available:** In addition to technical and formal considerations, the political context in which violations occurred and the political context in which reparations are being sought and claimed will have a significant impact on the avenues that are available to victims. In addition, national capabilities and the involvement or non-involvement of the international community (for instance by setting up a claims commission, an international or hybrid tribunal, referring the situation to the ICC, or simply providing financial assistance to support reparations claims) will impact the availability and effectiveness of potential reparations avenues.
- **Temporal considerations:** The passage of time can affect the availability of redress mechanisms and the availability and quality of evidence may diminish over time.

[265] For example, if the State in question has ratified the OP-IESCR, individuals can bring a complaint ('individual communications') alleging violations of economic, social and cultural rights contained in the ICESCR.
[266] The Inter-American, European, and the African Human Rights system generally require the exhaustion of domestic remedies before an individual can bring a complaint before their human rights commissions or courts.

Administrative programs vs. judicial proceedings

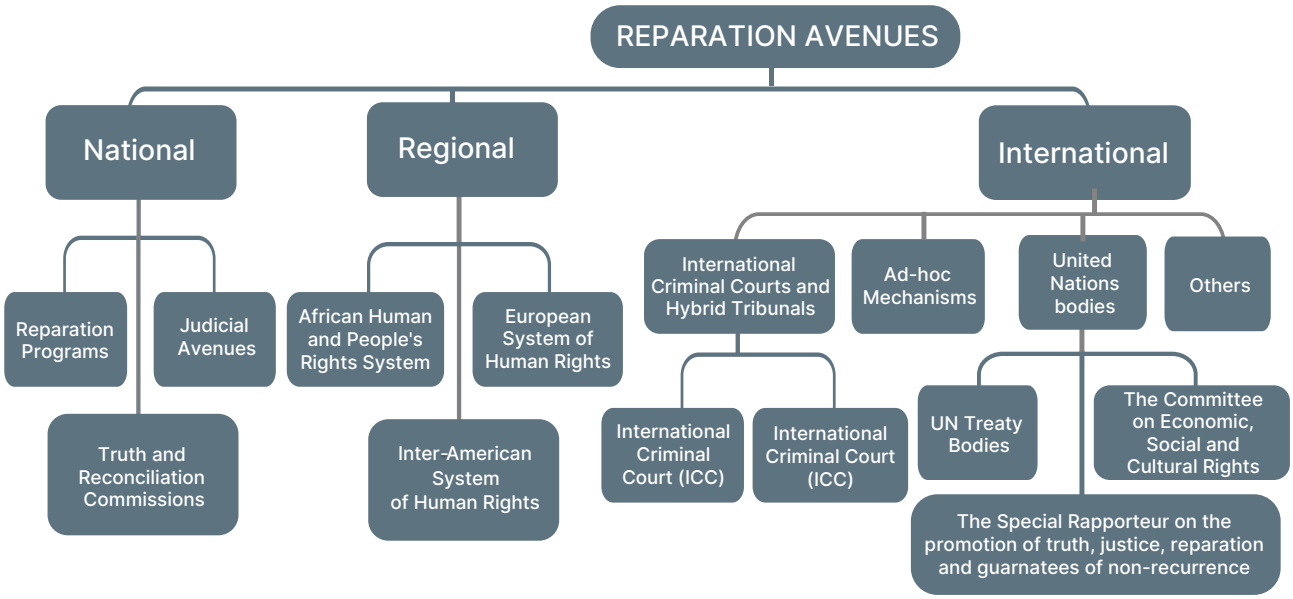
Where reparation avenues exist, they may be offered through different types of mechanisms or programmes. One of the key distinctions that might guide research, advocacy and pursuit of reparations is whether reparations are available through an administrative reparation programme or through judicial proceedings. Practitioners working with starvation victims should have an understanding of the differences between administrative reparation programs and reparations obtained through judicial proceedings in order to effectively determine the most appropriate mechanism(s) to address the harm suffered by the victims.

ADMINISTRATIVE REPARATION PROGRAMMES	JUDICIAL PROCEEDINGS
Non-adversarial redress procedure that might be established at the **national, regional, or international level** to ensure that victims have access to adequate and effective remedies.[267] Often established to deal with **large number of claims in situations of mass human rights violations** in the context of post conflict transition or historical injustices.[268] Involves **submitting an application** to an administrative mechanism. The **eligibility criteria** can vary, and it is usually based on the nature of the violation, the harm suffered, or specific vulnerability criteria. Tend to require a **lower standard of proof** and more **relaxed rules of procedure than judicial proceedings**.[269] May offer **faster results**, **lower costs**, and a **higher likelihood of receiving benefits**.[270] However, they might also result in lower financial reparation awards and might not involve a finding of legal wrongdoing. These programs may offer different forms of reparations. Some of these programmes may provide for material or symbolic measures and others may distribute benefits to individuals or collective groups.[271]	Involve seeking redress through a **formal legal process** at the **national, regional, or international level.** Reparations are provided in **the context of a specific case** based on the particular harm experienced by each victim.[272] The rules of the Court set out the requirements for initiating a case, presenting evidence, and other aspects of the litigation process. **Standing, i.e. whether a particular person can bring a particular case,** is often determined by legal principles and rules specific to the jurisdiction and the type of case. The **standard of proof** is usually higher compared to administrative programs.[273] May involve **higher financial costs**[274] and **lengthy proceedings**.[275] Reparations awarded through judicial proceedings may not extend their impact or benefit to other victims or the broader community who may find themselves in a similar situation as the applicant but were not involved in the legal process.[276]
Based on the right to an effective remedy, victims should be able to obtain reparations through both administrative reparation programmes and through judicial remedies.[277]	

[267] UN Doc. A/HRC/42/45, para.31.
[268] Repairing from the Bench From Finding Responsibility to Fashioning Judicial Redress, ICTJ (2024), p.9; L. Moffett 'Reparation Options for the War in Ukraine' para.30; C. Correa, From Principles to Practice: Challenges of Implementing Reparations for Massive Violations in Colombia, ICTJ (2015), p.7; UN Doc. A/HRC/42/45, para.32; UNSG 'Guidance Note Conflict Related Sexual violence', p.6.
[269] African Court Comparative on the Law and Practice of Reparations, p.7, ft.21; L. Moffett, Reparation Options for the War in Ukraine para.30; UNSG 'Guidance Note Conflict Related Sexual violence', p.6.
[270] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para.4.
[271] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/69/518, 2014, para.22.
[272] Repairing from the Bench From Finding Responsibility to Fashioning Judicial Redress, ICTJ (2024), p.8.
[273] For more information regarding burden and standard of proof see African Court Comparative on the Law and Practice of Reparations, p.30-33.
[274] Repairing from the Bench From Finding Responsibility to Fashioning Judicial Redress, ICTJ (2024), p.11.
[275] UN Doc. A/HRC/42/45, para.32.
[276] OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes', p.6.
[277] UNSG 'Guidance Note Conflict Related Sexual violence', p.6; L. Moffett 'Reparation Options for the War in Ukraine' para.39.

Potential redress avenues for starvation victims

As noted, the availability of particular avenues for pursuing reparation will depend on the context. Practitioners will need to map these out for themselves. The following examples are provided and described as illustrative, not exhaustive, and intended to provide a sense of the different types of mechanisms that practitioners should consider in such a mapping process:



National reparation avenues

Commonly, redress is first sought at the national level. Access to regional and international mechanisms is extremely limited, and typically requires the exhaustion of domestic remedies and carries a greater financial burden. Domestic remedies available at the national level vary, depending on the legal framework applicable to the avenue through which justice for rights violations is sought.[278] Thus, as a first step, practitioners should map any **potential redress avenues** offered at the domestic level through **judicial avenues** (civil, criminal, and human rights litigation) and through **administrative reparation programs**. This also includes mapping national authorities that investigate and prosecute individuals for the commission of international crimes according to the principle of universal jurisdiction, and assessing whether the victims might be positioned to seek any compensation or other form of reparation through these and other processes.[279]

Domestic judicial avenues may often be accessed in the following ways—but will depend on the legal framework and judicial mechanisms available at the national level:

- Through **criminal prosecution**, for example by filing a criminal complaint and requesting a ruling on reparations, or by becoming a civil party in a criminal procedure. The claim for reparations would depend on the conviction.[280]
- Through **civil litigation,** for example by filing a civil case for reparation against the individual perpetrator.[281] The existence of a requirement in civil cases for compensation to be contingent upon the resolution of criminal proceedings can vary depending on the legal system.[282]
- Through **human rights litigation**, for example by filing a constitutional case against the State or by filing a **complaint before a national human right mechanism** such as ombudspersons or human rights commissions or committees.

[278] Adjudicating Economic, Social and Cultural Rights at National Level, A practitioners Guide, p.28 ('This variability is especially pronounced in respect of ESC rights because they are often not expressly or fully guaranteed in constitutions or legislation').
[279] Fidh, ECCHR, REDRESS, Breaking Done Barriers. Access to Justice in Europe for Victims of International Crimes. (2020), p. 126-127.
[280] E.C Gillard, 'Reparation for violations of international humanitarian law'. IRRC September 2003 Vol. 85 No 851, p.547; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p.32.
[281] E.C Gillard, 'Reparation for violations of international humanitarian law'. IRRC September 2003 Vol. 85 No 851, p.547; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p.32.
[282] For example, the Civil Code of Ukraine provides a litigation framework for compensation claims for damages that do not necessarily have to be linked to criminal accountability processes. The Delivery of Reparation For Ukraine. Briefing Paper. REDRESS and Global Survivors Fund. (2023), p.6; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p.32.

Administrative reparation programs may often be accessed by filing a claim for compensation or other forms of reparations through an administrative reparation program (if available).[283]

Truth and Reconciliation Commissions: In certain post-conflict contexts, truth commissions are established to investigate and document human rights violations, including those related to starvation. These commissions may contribute to the assessment of the impact violations have had on victims. They often provide opportunities for victims to share their experiences and may also provide recommendations for providing reparations to victims or establishing specific processes or mechanisms, like an administrative mechanism, to provide reparations. While truth commissions do not have the power to order reparations directly, their findings and recommendations can contribute to subsequent reparations processes.[284]

Recommendations for Practitioners:

The availability and accessibility of national reparation avenues can vary widely between countries and localities, and practitioners should adapt their strategies based on the specific context in which they are working. There may also be no national reparation avenues available. To determine whether avenues available for reparations exist at the national level, practitioners should:

- **Understand the legal framework of the country where the violation has occurred and the jurisdiction where victims might be able to claim reparations.** This may involve examining national legislation, international conventions ratified by the country, and relevant case law. Determine whether and which courts or tribunals have jurisdiction to provide reparations for relevant wrongful acts and investigate precedents to see if victims have successfully obtained them.
- **Identify and seek counsel from governmental and non-governmental institutions and organizations working on reparations.** This can include ministries, commissions, ombudsman offices, truth and reconciliation commissions, and specialized agencies.
- **Conduct research on any national reparation programs or transitional justice initiatives that exist in the country of interest.** Government websites, official reports, as well as academic publications may provide details on any existing programs or initiatives, as well as eligibility criteria, application processes, and available remedies.
- **Consult and engage with international organizations and local and international CSOs engaged in human rights work.** These entities may be able to provide insights into the current landscape of reparations and potential avenues in the country in question.[285] Reach out to organizations working on human rights and transitional justice as they may have published reports or engaged in advocacy related to reparations programs and may have information on national reparation mechanisms. Explore whether the **State has participated in international mechanisms** such as universal periodic reviews or litigation and examine any recommendations regarding reparations.

Regional reparation avenues

In case of shortcomings at the domestic level, starvation victims may have an option to bring their reparation claims before regional human rights courts and commissions,[286] such as the Inter-

[283] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p.32.
[284] L.Moffet and J.Gallen. From Truth to Repair: Implementing Truth Commissions' Recommendations on Reparations January (2020), p.3; OHCHR 'Rule of Law Tools for Post-Conflict States: Reparations Programmes', p.11; International Center for Transitional Justice, Civil Society-Led Truth-Seeking Initiatives Expanding Opportunities for Acknowledgment and Redress, (2022).
[285] For example: The website of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence publishes comments provided by the Special Rapporteur to States on the adoption and review of national legislation and policy. The website also publishes information about the country visits the special Rapporteur conducts to assess the transitional justice measures adopted by the State concerned.; OHCHR provides information and resources on human rights, including reparation mechanisms available in different countries. For example, the UPR databases may contain information on measures taken by states to implement recommendations related to reparations made during the Universal Periodic Review process; Organizations such as Amnesty International, Human Rights Watch and Open Society Justice Initiative are well-known for their work in promoting human rights including addressing issues related to reparations at the national level.
[286] M. Cherif Bassiouni, "International Recognition of Victims' Rights," Human Rights Law Review, Vol. 6, No. 2 (2006), p. 238.

American Human Rights System, the African System of Human and Peoples' Rights, or the European Court of Human Rights.[287] These bodies have jurisdiction over human rights violations within their respective regions and have the authority to recommend or order reparations for victims.[288] Some starvation victims may not have this option in situations, for example, where regional human rights mechanisms do not exist, do not have the ability to hear individual or relevant claims, or do not function. Nevertheless, some regional avenues that could provide access to remedies to victims of starvation and starvation-related violations include:

The Inter-American Human Rights System

The Inter-American regional human rights system, adopted by the Organization of American States (OAS),[289] recognises economic, social and cultural rights and establishes corresponding responsibilities on States to promote and safeguard these rights.[290] Two key organs safeguard those rights: the Inter-American Commission on Human Rights ('IACHR'),[291] and the Inter-American Court of Human Rights ('IACtHR').[292]

Victims of starvation and starvation-related violations **under the jurisdiction of the IACHR** may **file a petition to the Commission containing complaints of violations by a State Party.**[293] On the basis of this petition, the Commission may investigate the situation and can make recommendations to the State to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts, and to make reparations.

The IACtHR hears cases related to human rights violations, including the right to food, water, and the right to an adequate standard of living,[294] and may issue binding judgements.[295] When the IACtHR declares the international responsibility of a State, it may also **order a series of reparation measures**.[296] The IACtHR has an extensive and progressive record on reparations.[297]

The European Human Rights System[298]

For Europe, the European Court of Human Rights (**ECtHR)** is a regional human rights court tasked to ensure that States respect the civil and political rights and guarantees set out in the European Convention on Human Rights (ECHR).[299] Victims of starvation and starvation-related violations can bring their cases before the Court by alleging violations of specific rights protected under the

[287] Other may include ECOWAS Community Court of Justice or the East African Court of Justice.
[288] Furuya S, Sandoval C. The Right to Reparation for Victims of Armed Conflict: Operationalising the Right of Victims of War to Reparation. In: *Reparation for Victims of Armed Conflict*. Max Planck Trialogues. (Cambridge University Press; 2020).
[289] 35 States of the Americas are members of this organization after ratifying the OAS Charter. For an updated list see here.
[290] See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"): Website. Inter-American Court of Human Rights ('The Inter-American System was formally started with the passing of the American Declaration of the Rights and Duties of Man in 1948. Additionally, the System includes other instruments, such as the American Convention on Human Rights; protocols and conventions on specialized themes, such as, among others, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; and the Rules of Procedure and Statutes of its organs.').
[291] ACHR, Article 33.
[292] Website. Inter-American Court of Human Rights.
[293] ACHR, Article 44; Information brochure. Petition and Case System. Inter-American Commission on Human Rights, (2010); Statute of the Inter-American Commission on Human Rights, Articles 18-20.
[294] The jurisprudence of the Court is particularly relevant in relation to indigenous communities access to their ancestral lands, traditional livelihoods, as well as their access to food and water. *Communities of the Lhaka Honhat (Our Land) Association v. Argentina,* Judgment.
[295] ACHR, Article 68.1 (´The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties´).
[296] ACHR, Article 63.1; See Rules of Procedure, Article 66. ("1.When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon. 2. If the Court is informed that the victims or their representatives, the respondent State, and, if applicable, the petitioning State have reached an agreement with respect to the execution of the judgment on the merits, it shall verify that the agreement accords with the Convention and rule accordingly.").
[297] A. Huneeus, "Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights", 44 Cornell International Law Journal (2011), p. 494; T.M. Antkowiak, "An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice", Vol. 47 Stanford Journal of International Law (2011); D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p. 122, ft. 6; LJ. Laplante Bringing effective remedies home: The Inter-American Human Rights System, Reparations, and the Duty of Pevention. Netherlands Quarterly of Human Rights, (2004), p.35.
[298] Website European Court of Human Rights.
[299] The Court was created pursuant to the ECHR (Article 19). It is composed of a number of judges equal to the number of member states to the Council of Europe that have ratified the European Convention on Human Rights (Article 20).

ECHR (individual applications),[300] including the right to life (Article 2) and the prohibition of torture or other inhuman or degrading treatment (Article 3).[301]

The African Human and Peoples' Rights System[302]

The African regional human and peoples' rights system, created under the auspices of the African Union (AU), includes a Commission and a Court with complementary mandates.

The African Commission on Human and Peoples' Rights (ACHPR)[303] is a quasi-judicial body charged with the promotion and protection of human rights in Africa.[304] The Commission is empowered to receive complaints from individuals and organizations alleging that a State party to the African Charter on Human and Peoples' Rights has violated one or more of the rights guaranteed in the Charter.[305] To that effect, the ACHPR can make non-binding recommendations that may include calling for reparations.[306]

The African Court on Human and Peoples' Rights[307] is a regional court established in 2004.[308] The Court has jurisdiction to hear cases related to the interpretation and application of the African Charter on Human and Peoples' Rights, the African Court Protocol (P-ACHPR) and other human rights treaties ratified by the concerned States.[309]

Recommendations for Practitioners:

- **Map and examine any regional human rights systems** that may have jurisdiction over starvation and starvation-related violations. Practitioners should be aware that not all regions have a well-functioning human rights mechanism in place.
- **Review the relevant country's ratification status, reservations, and human rights framework** to determine what international and regional law applies and whether the relevant country has consented to victims bringing claims against it in front of particular international or regional bodies.
- **Review the admissibility criteria and jurisdictional requirements** for filing petitions with the relevant regional bodies. For example: all these organs **require the prior exhaustion of domestic remedies**.[310]
- Consider the **potential remedies available** to starvation victims through these systems and evaluate the extent to which orders or recommendations by these bodies are complied with and/or enforced.

International reparation avenues

At the international level, practitioners and victims of starvation and starvation-related violations may, depending on the circumstances, have the choice to seek reparations through different avenues. This includes requesting reparations at an international or hybrid tribunal, as well as before *ad hoc* mechanisms like international claims commissions.

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[300] Individuals, companies or NGOs can file individual applications or complaints directly with the Court, alleging violations of the rights set out in the Convention. Where the Court concludes that a member State has committed a violation, it may award 'just satisfaction' to the injured party (ECHR, Article 41 'If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.'). Just satisfaction' means a monetary payment for the damage suffered by the victim of a human rights violation. This remedy is afforded to compensate the applicant for the actual damage that is established as being consequent to a violation. It may cover pecuniary and non-pecuniary damage, as well as costs and expenses. (Practice Direction: Just Satisfaction Claims (Article 41 of the Convention); Briefing Paper. The Delivery of Reparation for Ukraine. REDRESS and Global Survivors Fund (2023), p.15.

[301] It is important to note that most cases where the ECtHR has found inadequate food a violation of article 3 has been in the context of detention. For more information see C. James. Food, dignity, and the European Court of Human Rights. Legal Studies, Cambridge University Press (2023).

[302] For detailed information see the following: IJRC. Advocacy before the African Human Rights System: Manual for Attorneys and Advocates (2016); A Guide to The African Human Rights System. Celebrating 30 years since the entry into force of the African Charter on Human and Peoples' Rights. Centre for Human Rights. University of Pretoria (2016); JRC. Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights (2018).

[303] African Commission on Human and Peoples' Rights website.

[304] The African Charter established the African Commission on Human and Peoples' Rights. ACHPR, Article 30. Its main functions are the protection and promotion of human and peoples' rights, and the interpretation of the African Charter on Human and Peoples' Rights.(ACHPR, Article 45).

[305] ACHPR, Article 55; Rules of Procedure of the African Commission on Human and Peoples' Rights of 2020, Rules 115- 120.

[306] Rules of Procedure of the African Commission on Human and Peoples' Rights of 2020, Rule 121 ('In deciding on the merits of a Communication the Commission may decide to defer examining a question of reparations and costs. To that end it may invite the parties to make additional written submissions or to hold a separate oral hearing.').

[307] African Court on Human and Peoples' Rights website.

[308] P-ACHPR, Article 1.

[309] P-ACHPR, Article 3.

[310] M. Cherif Bassiouni, "International Recognition of Victims' Rights," Human Rights Law Review, Vol. 6, No. 2 (2006), pp. 203-279, at p. 238.

Other international mechanisms, such as UN bodies or Special Rapporteurs, may also serve as forums where victims can inform about the harm suffered, raise awareness about the violations, and advocate for reparations. Moreover, registries of damages can document the harm experienced by victims and inform future reparations processes or legal actions.

International Criminal Courts and Hybrid Tribunals

In cases involving international crimes, victims and practitioners may be able to pursue justice and reparations for starvation and starvation-related violations through international criminal courts and tribunals, such as the International Criminal Court (ICC) or the Kosovo Specialist Chambers.

These Courts have jurisdiction over cases involving crimes against humanity, war crimes, aggression and genocide, including acts of deliberate starvation as a method of warfare.[311] In addition to investigating and prosecuting individuals responsible for serious international crimes, they may provide avenues for victims to seek reparations as part of the judicial process.

However, practitioners should be aware that access to reparations in international courts and tribunals can be restricted due to various factors, including jurisdictional limitations, lack of funds, lack of enforcement mechanisms, the limited number of prosecuted individuals, procedural obstacles, and the necessity of a guilty judgment in order to award reparations.[312] In general, **the number of victims that can obtain reparations through international criminal tribunals is limited**.

International Criminal Court (ICC)

At the ICC, victims of international crimes, including starvation and starvation-related international crimes, have the right to participate in proceedings and the right to claim reparations. Under Article 75(2) of the Rome Statute, the ICC can make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims. These can include restitution, compensation and rehabilitation.[313] The Court may also make an order that the award for reparations is made through the Trust Fund for Victims (TFV) provided for in Article 79.[314]

Reparations can only be ordered by the ICC at the end of a trial and in relation to crimes for which an accused has been charged and convicted.[315] Thus, the potential number of victims who would benefit from the process is quite narrow[316] and the resources limited.[317] The ICC has quantified the harm inflicted and rendered reparations orders in the cases of *Lubanga*, *Katanga*, *Al-Mahdi*, *Ntaganda,* and recently in *Ongwen*.[318] For more information about the reparation process and the orders issued by the ICC see Annex IV.

Kosovo Specialist Chambers (KSC)[319]

In addition to the ICC, there are hybrid or specialized tribunals established for specific conflicts or regions, where victims may or may not be able to seek reparations.[320] The Kosovo Law on Specialist

[311] Rome Statute, Article 8(2)(b)(xxv) and Proposed Article 8(2)(e)(xix); Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, August 3, 2015 ('KSC St.'), Article 14.1.b.(xxv).
[312] L. Moffett 'Reparation Options for the War in Ukraine' p. 15; C. Sperfeldt. Practices on Reparations in International Criminal Justice. Cambridge University Press. (2022); S. Kendall and S. Nouwen, 'Representational Practices at the International Criminal Court' The Gap Between Juridified and Abstract Victimhood, Law and Contemporary Problems (2014), p. 241–246.
[313] The ICC was the first international permanent criminal tribunal with the authority to provide reparations to individuals. Subsequently, the ECCC similarly recognised the right of victims to seek and receive reparations (ECCC 'Internal Rules'.Rule 23quinquies). For more information see D. Odier Contreras- Garduno Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations. Vol 84. Intersentia; (2018), p.175-176.
[314] Rome Statute, Article 75(2); Website Trust Fund for Victims. The TFV has a dual mandate. **Reparation mandate (**Rome Statute, Article 75.2; ICC Rules of Procedure and Evidence, Rule 98 (1-5))**:** The TFV implements Court reparation orders directed against a convicted person with the funds collected from the convicted person and deposited with the Trust Fund or with the voluntary contributions of States Parties or other donors (Website Trust Fund for Victims; Rome Statute, Article 79; ICC Rules of Procedure and Evidence, Rules 98 and 217, 218(3)). **General assistance mandate** (Regulations of the Trust Fund for Victims, paras. 47-48.) The TFV is also entrusted with the responsibility of providing physical, psychological, and material support to victims and their families. This assistance is not linked to an ICC conviction and relies upon resources the Trust Fund has raised through voluntary contributions.
[315] ICC Rules of Procedure and Evidence, Rules 94-99.
[316] L. Moffett 'Reparation Options for the War in Ukraine' p. 15.
[317] M. Åberg, The Reparations Regime of the International Criminal Court. Reparations or General Assistance? p.5.
[318] Lubanga Reparation Order, Ntaganda Reparation order; Katanga Reparations Order, para. 121; Trial Chamber VIII, Prosecutor v Ahmad Al Faqi Al Mahdi, Reparation Order, 17 August 2017, ICC-01/12-01/15-236, ('Al-Mahdi Reparation Order'); Trial Chamber IX, Prosecutor v. Dominic Ongwen,, Reparation Order, 28 February 2024, ICC-01/04-01/06-2904 ('Ongwen Reparation Order').
[319] The Kosovo Specialist Chambers is a criminal hybrid court with the mandate and jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law, commenced or committed in Kosovo between 1 January 1998 and 31 December 2000, related to the allegations contained in the Council of Europe Assembly Report of 2011. Council of Europe Parliamentary Assembly Report on "Inhuman treatment of people and illicit trafficking in human organs in Kosovo" (2011).
[320] For example, the Special Criminal Court of the Central African Republic has the authority to grant reparations. See Organic law No. 15-003 on the creation, organisation and functioning of the Special Criminal Court and Law n°18-010 establishing the rules of procedure and evidence of the Special Criminal Court of the Central African Republic, Article 129.

Chambers and Specialist Prosecutor's Office ('Law on Specialist Chambers') **recognizes starvation as a war crime in international armed conflict**[321] and provides that the judgment may include a decision on the scope and extent of harm and may include a **reparation order** against the convicted individual or may **refer victims to national civil litigation**.[322]

Ad Hoc Mechanisms

In situations where judicial mechanisms are unavailable or unsuitable to the task of adjudicating mass claims, alternative *ad hoc* mechanisms may be established to provide avenues for reparations or to document the harm suffered by the victims. These may include international claims commissions, international registries for damages, and investigative bodies.

International claims commissions may be established to address mass claims of individuals or groups who have suffered harm as a consequence of armed conflicts.[323] These mechanisms typically seek to address specific types of harm through the provision of monetary compensation[324] and are generally established by binding international instruments, such as international agreements, treaties, or resolutions.[325] Each of these claims commissions have their own mandate, eligibility criteria, procedures, and requirements for assessing and adjudicating the claims.

Recent examples include the United Nations Compensation Commission (UNCC) and the Eritrea-Ethiopia Claims Commission (EECC).

The United Nations Compensation Commission (UNCC) was created in 1991 as a subsidiary organ of the UNSC with the mandate to process claims and pay compensation for losses and damage suffered by individuals, corporations, governments and international organizations 'as a result of Iraq's unlawful invasion and occupation of Kuwait.'[326] In this case, the UNSC created a Compensation Fund, funded by Iraq, to finance the reparation claims and cover the UNCC's expenses.[327] The Commission 'was created as a claims resolution facility that could make determinations on a large number of claims in a reasonable time. As such, it operated more in an administrative manner than in a litigation format.'[328] The UNCC created six different categories of claims,[329] depending on the status of the claimant, the type of loss, and the amount claimed.[330] The UNCC provided monetary compensation[331] to eligible claimants within these categories, including claims filed for **depletion of natural resources**.

[321] Law on Specialist Chambers and Specialist Prosecutor's Office. Law No.05/L-053 (´Law on Specialist Chambers and Specialist Prosecutor's Office´) Article 14 1. b. (xxv) ('Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions'.).

[322] Law on Specialist Chambers and Specialist Prosecutor's Office, Article 22.8-9; In the case of *Prosecutor v. Mr Salih Mustafa*, the Trial Panel of the KSC conducted reparation proceedings in parallel with the criminal proceedings. Following the conviction of Mr. Mustafa, the Trial Panel issued a Reparation Order were it found that individual reparations in the form of compensation constituted the most appropriate form of reparations in this case.

[323] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p. 255.

[324] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p. 267.

[325] For example, these agreements may be negotiated by the parties involved in the conflict or mandated by an international organization such as the United Nations. The United Nations Compensation Commission (UNCC) was created by UNSC, and the Eritrea-Ethiopia Claims Commission (EECC), created by an international agreement between Eritrea and Ethiopia (Algiers Peace Agreement).

[326] UNSC Res. 692 (1991) on establishment of the UN Compensation Fund and the UN Compensation Commission under Security Council resolution 687 (1991); UNSC Res. 674, UN Doc. S/RES/674 (1990), para. 8; UNSC Res. 687, Doc. S/RES/687, (1991), para. 16.

[327] UNSC Res. 687, Doc. S/RES/687, (1991), para.18; UN Secretary-General, Report pursuant paragraph 19 of the UNSC Res. 687 (1991), UN Doc. S/22559 (1991), para. 3.

[328] Final Report of the Governing Council of the United Nations Compensation Commission Letter dated 10 February 2022 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council. UN Doc. S/2022/104, para 32.

[329] "**A**": claims from individuals forced to flee Kuwait; "**B**": claims from individuals who (or whose family) suffered injuries and/or death; "**C**": claims from individuals for business losses, pain and anguish, property damage etc. less than $100,000; "**D**" claims from individuals for business losses, pain and anguish, property damage etc. more than $100,000; "**E**": claims from corporations and other entities for business (including oil sector) losses; and "**F**": claims filed by governmental and international agencies, including for cost of resettling and providing relief to citizens, claims for damage to government property, environment damage and **depletion of natural resources** in region.

[330] UNCC's Provisional Rules for Claims Procedure, UNCC Decision 10, Doc. No. S/AC.26/1992/10, (1992).

[331] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations*. Vol 84. Intersentia; (2018), p.268.

The Eritrea – Ethiopia Claims Commission (EECC) was established in 2000 as part of the peace agreement between Eritrea and Ethiopia.[332] This commission was given the mandate to 'decide through binding arbitration all claims for loss, damage or injury by one Government against the other' related to the conflict and resulting from 'violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.'[333] The Parties were entitled to submit claims on their own behalf and on behalf of their nationals, including both natural and legal persons.[334]

International registries of damages are mechanisms or databases established to document and track damages caused by specific events or conflicts. While these registries do not directly provide compensation or reparation, they can play an important role in recording and acknowledging the harm suffered by victims and can inform efforts to seek reparation. Some examples include the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD),[335] and the International Registry of Damages (RD4U) established in 2023 by the Council of Europe to receive claims for damages caused by the Russian crime of aggression in Ukraine.[336]

Investigative bodies might be established by the UN General Assembly, the UN Security Council, or the UN Human Rights Council with a mandate of investigating and documenting IHRL violations, IHL violations and/or international crimes. These entities can lay the foundation and make recommendations for future international, regional, and national redress mechanisms. Investigative bodies can collect evidence on human rights violations, including the identification of victims and their harm suffered, to inform reparation processes and support the demand for reparations. The findings of these investigative bodies can serve as a foundation for future reparation claims.

GRC's Starvation Mobile App Engaging with the Investigative Bodies provides general information about investigative body mandates and the general procedure for submissions by practitioners.

United Nations Mechanisms[337]

Victims and practitioners may also engage with United Nations mechanisms, such as Treaty Bodies and Special Rapporteurs, to share information on starvation and starvation-related violations. These mechanisms can provide recommendations, issue reports, and undertake investigations, all of which can play a significant role in raising awareness about violations and supporting advocacy for reparations. The specific UN mechanism that practitioners engage depends on the particular human rights at stake and the violations alleged.

UN treaty bodies[338]

Individuals claiming that their rights under a particular IHRL treaty have been violated by a State party may have the ability to **submit claims to certain UN treaty bodies**.[339] While treaty bodies

[332] Peace Agreement between Ethiopia and Eritrea concluded in Algiers on 12 December 2000; Eritrea-Ethiopia Claims Commission- Website Permanent Court of Arbitration website.
[333] Peace Agreement between Ethiopia and Eritrea concluded in Algiers on 12 December 2000, Article 5.
[334] Peace Agreement between Ethiopia and Eritrea, Article 5.
[335] UNGA Res. A/RES/ES-10/17 (2006), Establishment of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory; The UNRoD's mandate is to serve as a record, in documentary form, of the material damage and loss caused to all natural and legal persons concerned as a result of the construction of the Wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.
[336] Resolution CM/Res (2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. Adopted by the Committee of Ministers on 12 May 2023 at the 1466th meeting of the Ministers' Deputies. ('Resolution establishing the Register of Damage for Ukraine'). This registry has been established with the mandate to receive information on claims of damage, and evidence, or injury caused by Russia's invasion of Ukraine since February 24, 2022, categorize, classify and organize such claims, determine the eligibility of claims for inclusion in the Register, and assess their eligibility for future adjudication. Thus, the Register is not empowered to adjudicate claims but to feed claims into a separate mechanism that will be created to provide compensation for the victims. For updated information consult RD4U website.
[337] OHCHR Website. Instruments and Mechanisms.
[338] OHCHR Website (´The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties.´); A Simple Guide To The Un Treaty Bodies. International Service for Human Rights. (2015); Fact Sheet No. 30 (Rev. 1): The United Nations Human Rights Treaty System. Human Rights Mechanisms (2012).
[339] Treaty bodies perform several functions aimed at monitoring State implementation of the HR treaties. These functions include the consideration of State parties' reports, individual complaints, conduct of country inquires and the adoption of general comments. For more information see OHCHR Website.

generally review the compliance of States that have ratified a particular IHRL treaty with that treaty's provisions, in some cases, individuals can also submit individual complaints directly to a treaty body.

For victims of starvation and starvation-related violations, the Committee on Economic, Social and Cultural Rights (CESCR)[340] is particularly relevant. The CESCR is a UN treaty body of 18 independent experts whose primary role is to monitor State compliance with the ICESCR.[341] The CESCR **issues recommendations and general comments** that provide authoritative interpretations of the ICESCR provisions and guide states in fulfilling their obligations including, for example, their obligations related to the right to adequate standard of living, including adequate food, clothing and housing. While the Committee does not have the competence to provide reparations, its recommendations can influence domestic legislation, policies, and practices to provide reparations for violations of economic, social, and cultural rights.[342]

Through the **individual communication procedure**, individuals or groups may be enabled to bring a complaint with the CESCR, alleging violations of ESCR contained in the Covenant.[343] To submit an **individual complaint**, three basic conditions need to be met: the State in question must have **ratified the human right treaty**; the human rights treaty must have already **entered into force** in respect of the State in question; and the State must have **accepted the competence of the relevant treaty body to receive and consider complaints from individuals** (by ratifying an additional protocol or making a declaration under the respective convention) and this acceptance must have entered into force.[344]

When a treaty body finds a violation of the complainant's rights by a State party, it may issue a decision with recommendations for the measures the State must take to provide reparation.[345] In contrast to judicial proceedings, individual decisions from these Committees are not legally enforceable but may provide guidance to States on what an effective remedy and reparations should involve.[346]

Please refer to the table provided below to identify the human rights treaty bodies that have the potential to receive and review individual complaints or communications from individuals:

Human Rights Protected	HR Treaty	Complaints Procedure	UN Treaty Body
Civil and political rights	International Covenant on Civil and Political Rights	First Optional Protocol to the International Covenant on Civil and Political Rights;	Human Rights Committee (CCPR)
Torture and cruel, inhuman or Degrading treatment or punishment	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Declaration under Article 22 CAT	Committee against Torture (CAT)

[340] The Committee on Economic, Social and Cultural Rights website.
[341] By becoming a party to the Optional Protocol, States recognize the competence of the CESCR to receive complaints from individuals and groups within their jurisdiction alleging violations of their rights under the ICESCR. To obtain an updated list of the ratifications and accessions, please access here.
[342] For more information see UN HRC. Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights* UN Doc. CCPR/C/158 (2016).
[343] For detail information consult ESCR-NET-Manual-Booklet. Part Five: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; GI-ESCR Individual Communication Guide.
[344] The ratification status of these treaties on a country-by-country basis is available on the OHCHR website: Status of Ratification.
[345] Treaty Bodies' Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations. The Geneva Academy of International Humanitarian Law and Human Rights (2019), p.18.
[346] Evans 2012, p.57.

Human Rights Protected	HR Treaty	Complaints Procedure	UN Treaty Body
Racial discrimination	International Convention on the Elimination of All Forms of Racial Discrimination	Declaration under Article 14 CERD	Committee on the Elimination of Racial Discrimination (CERD)
Gender discrimination	Convention on the Elimination of All Forms of Discrimination against Women	States parties to the Optional Protocol to the Convention on the Elimination of Discrimination against Women	Committee on Elimination of Discrimination against Women (CEDAW)
Rights of persons with disabilities	Convention on the Rights of Persons with Disabilities	Optional Protocol to the CRPD	Committee on the Rights of Persons with Disabilities (CRPD)
Protection of all persons from enforced disappearance	International Convention for the Protection of All Persons from Enforced Disappearance	Declaration under Article 31 of the CED	Committee on Enforced Disappearances (CED)
Rights of migrants workers and members of their families	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Declaration under Article 77.	Committee on Migrant Workers (CMW)[347]
Economic, social, and cultural rights	International Covenant on Economic, Social and Cultural Rights	States parties to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights .	The Committee on Economic, Social and Cultural Rights (CESCR)
Rights of the child	Convention on the Rights of the Child and its Protocols (OPSC, OPAC)	Optional Protocol (on a communications procedure) to the Convention on the Rights of the Child.	Committee on the Rights of the Child (CRC)

Practitioners can support victims of starvation and starvation-related violations by providing advice and assistance throughout the process of submitting a complaint. This support can involve guiding individuals on how to effectively present their case, ensuring that all necessary information is included, and helping them comply with the procedural requirements. In addition, practitioners can also submit *amicus curiae* briefs to the CESCR.[348]

[347] The individual complaint mechanism has not yet entered into force. It will become operative once 10 states parties make the necessary declaration under Article 77.
[348] OP-ICESCR, Article 8.1.

UN Special Procedures[349]

The UN Special Procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.[350]

In the context of documenting starvation and starvation-related violations for the purposes of obtaining reparations for victims, practitioners could consider engaging with several UN Special Procedures, including the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, or the Special Rapporteur on the right to food.

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence[351] was appointed in 2011 by the HRC [352] to deal with situations of transition from conflict or authoritarian rule in which there have been gross violations of human rights and serious violations of international humanitarian law.[353] In this context, the Special Rapporteur focuses on the measures adopted by the relevant authorities to guarantee truth, justice, reparation, memory and guarantees of non-recurrence. The Special Rapporteur's tasks include '[t]o identify, exchange and promote good practices and lessons learned, and to identify potential additional elements with a view to recommending ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence'[354] and 'to make recommendations concerning, inter alia, judicial and non-judicial measures when designing and implementing strategies, policies and measures for addressing gross violations of human rights and serious violations of international humanitarian law'.[355]

The Special Rapporteur on the right to food was appointed in 2000 by the Commission on Human Rights to address the need for an integrated and coordinated approach to promoting and protecting people's right to food.[356] This Special Rapporteur conducts different activities, including monitoring the situation of the right to food throughout the world and communicating with States and other parties in relation to their alleged violations of this right.

Other avenues

Adhering to a victim-centered approach, practitioners may explore alternative avenues through which victims could seek other forms of compensation or assistance. While these alternatives may not strictly constitute reparation measures,[357] they may help alleviate victims' suffering and address some of their immediate needs. Practitioners are advised to actively explore alternative avenues to assist and provide opportunities for victims, including but not limited to the following:

- *'Ex gratia' or condolence payments (Amends).*[358] These involve payments that States may voluntarily offer to individuals they have harmed. There is no requirement of establishing legal or moral wrongdoing as a basis for such payments.[359] A recent example includes the

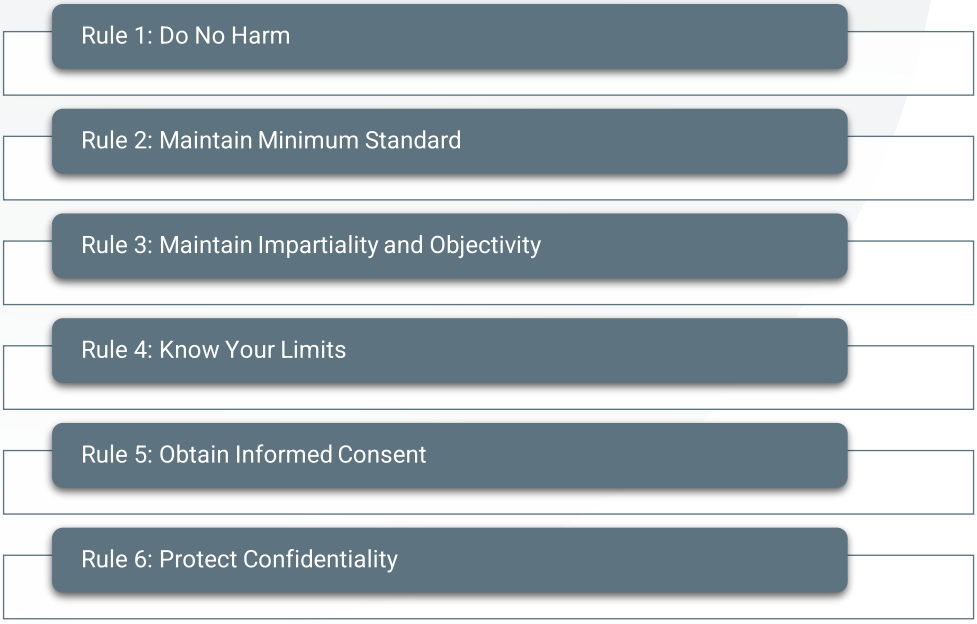
[349] Website OHCHR. Special Procedures.
[350] OHCHR. Manual of Operations of the Special Procedures of the Human Rights Council (2008), p.4; The experts report annually to the HRC, and the majority of the mandates also report to the General Assembly These experts carry out different activities, including: monitoring the situation in countries through country visits and releasing reports with their findings and recommendations; acting on individual complaints by sending communications to governments and others, including international organizations and others; conducting thematic studies, preparing reports, and organizing expert consultations with independent specialized experts or groups of experts to gather information and contribute to the development of human rights standards; and/or engaging in advocacy and public awareness, and providing advice to governments.
[351] Website OHCHR. Special Rapporteur on truth, justice and reparation; The Special Rapporteur submits annual thematic reports to the HRC and to the General Assembly documenting the Special Rapporteur's findings on particular topics and providing guidance and recommendations for UN member States and others. The Special Rapporteur is also mandated to conduct official visits to States to provide technical assistance and advisory services to Governments upon request. The current mandate holder is Mr. Bernard Duhaime and the former mandate holders were Mr. Fabian Salvioli, and Mr. Pablo de Greiff.
[352] UNGA Res. 18/7, UN Doc. A/HRC/RES/18/7 (2011).
[353] Website OHCHR. Special Rapporteur on truth, justice and reparation. About the mandate; UN Doc. A/HRC/RES/18/7 (2011); UN Doc. A/HRC/RES/54/8 (2023).
[354] UN Doc. A/HRC/RES/18/7 (2011), para.1 c.
[355] UN Doc. A/HRC/RES/18/7 (2011), para.1 e.
[356] UN Website Special Rapporteur on the right to food.
[357] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 2012, para.24. ft.10 ('The difference between mere compensation and reparation is that reparations, in order to be understood as such, must be accompanied by some sort of acknowledgment of responsibility (which need not be an acknowledgment of culpability.').
[358] Belfast Guidelines, Guideline 9 'Making amends'; Amends and Reparations for Civilian Harm in Armed Conflict, Center for Civilians in Conflict (CIVIC), (2022); M. Hunke, Making Amends: A Guide to US Law and Policy on Post-Harm Amends (CIVIC) (2021).
[359] Designing Amends for Lawful Civilian Casualties The Yale Journal of International Law (2017), p.129.

limited offer of condolence payments for civilians killed by air strikes in Yemen.[360] Practitioners should be aware that the lack of recognition of wrongdoing by the perpetrator can frustrate victims; other victims may desire or need the support available. Whether to pursue such amends should be considered on a case-by-case basis and with full and robust consultation with relevant victims.

- *Corporate Human Rights Remediation Programs or grievance mechanisms.*[361] As noted in the UN Guiding Principles on Business and Human Rights, '[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.'[362] Based on this principle, certain businesses may offer grievance mechanisms through which they provide some form of relief for victims of business-related abuses.
- *Emergency relief and development programs.*[363] Development and relief programs do not replace the obligation to provide adequate and prompt reparation for human rights violations, but they can provide relief and support to victims.[364]
- *Civil society-led reparations.*[365] These actions are characterized by the initiative and active participation of civil society actors in designing, advocating, and delivering reparations to victims. Some examples include the memorialization of famine victims.[366]
- *UN Compensation funds*[367] such as the UN Voluntary Fund for Victims of Torture,[368] established in 1981 (by UNGA resolution 36/151), the Voluntary Fund for Victims of Contemporary Forms of Slavery,[369] created in 1991 (by UNGA resolution 46/122), and the UN Voluntary Fund for Indigenous Peoples[370] created in 1985 (by UNGA resolution 40/131). These funds are financed by voluntary contributions from States and donations from NGOs, individuals and private sector actors.
- *Searching and advocating for alternative funding avenues.*[371]

[360] 'Returned to Zero'. The Case for Reparations to Civilians in Yemen. Mwatana for Human Rights, Lowenstein International Human Rights Clinic Yale Law School (2022).
[361] OHCHR UN Guiding Principles on Business and Human Rights (2011); OHCHR, The corporate responsibility to respect human rights – an interpretive guide,(2012); OHCHR Accountability and Remedy Project Improving accountability and access to remedy in cases of business involvement in human rights abuses Phase III: Enhancing the effectiveness of non-State-based grievance mechanisms (2018); International Organization for Migration (IOM), 2021. Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances. IOM.
[362] OHCHR UN Guiding Principles on Business and Human Rights (2011), Guiding Principle 22.
[363] Naomi Roht-Arriaza and Katharine Orlovsky. Research Brief. 'A complementary Relationship: Reparations and Development'. ICTJ (2009).
[364] S. Kasande Kihika and E. Kallweit. 'Building Blocks for Reparations: Providing Interim Relief to Victims Through Targeted Development Assistance' ICTJ (2020), p.8.
[365] Civil Society-Led Truth-Seeking Initiatives: Expanding Opportunities for Acknowledgment and Redress. ICTJ.(2022); For information about the contribution that CSOs can bring to reparations see Handbook on Civil Society Organisations and Donors Engagement on Reparations. Reparations, Responsibility & Victimhood in Transitional Societies; Iraq. Victims unveil first memorial for the disappeared. Impunity Watch. (2024).
[366] C. Orjuela, Remembering/Forgetting hunger: towards an understanding of famine memorialization, Third World Quarterly,.(2024), p. 270.
[367] The Practical Guide to Humanitarian Law. MSF.
[368] Website OHCHR. The United Nations Voluntary Fund for Victims of Torture. ('The Fund awards hundreds of grants to civil society organizations worldwide to deliver medical, psychological, legal, social and other assistance to the victims of torture.').
[369] Website Voluntary Fund for Victims of Contemporary Forms of Slavery.
[370] Website UN Voluntary Fund for Indigenous Peoples. It offers financial support in the form of grants to help representatives of indigenous communities and organizations to participate in UN mechanisms and processes most relevant to indigenous issues.
[371] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli Financing of reparation for victims of serious violations of human rights and humanitarian law, A/78/181.

PART 4: SIX ESSENTIAL RULES FOR DOCUMENTATION AND INVESTIGATION


Rule 1: Do No Harm
Rule 2: Maintain Minimum Standard
Rule 3: Maintain Impartiality and Objectivity
Rule 4: Know Your Limits
Rule 5: Obtain Informed Consent
Rule 6: Protect Confidentiality

In order to control the quality of the documentary or investigative outcome, to safeguard the wellbeing of all parties involved, and to protect the integrity of the investigation, some essential rules should be followed throughout the process of preparing for or seeking reparations. This Guide, as with other GRC Investigative Manuals, advises practitioners to abide by the following Six Essential Rules while conducting research for reparation purposes:

Rule 1: Do No Harm

Do No Harm is a basic rule in criminal justice investigations and is also applicable for reparations-oriented investigations and documentation efforts. It requires practitioners to recognise the potential harmful impact of their intervention and take step to:

- avoid risk exposure for victims and all parties involved in the investigation or documentation effort;[372]
- mitigate possible negative effects of risk;[373] and
- understand the context in which they are operating.[374]

As an ongoing principle,[375] Do No Harm underpins **all stages** of the process and is translated into concrete measures as recommended below.

[372] Phillippe Kirsh Institute, 'Prosecuting International Crimes Series: Investigation Policy and Principles of Cooperation and Collaboration' (7 June 2018); PILPG Handbook, pp. 8, 21.
[373] PILPG Handbook, pp. 8, 21
[374] OHCHR, Training Manual on Human Rights Monitoring (2001) HR/P/PT/7, p. 15; ICTY Manual on Developed Practices, p. 34.
[375] PILPG Handbook, p. 20.

Risk Identification and Management

To do no harm, one must know where the risk of harm lies. Harms can be done to victims, witnesses, colleagues, local communities, and oneself. Additional attention must be paid to civilians and those who are especially vulnerable, (see Children-Related Investigation). Practitioners bear the responsibility for their protection through all stages of the process.

Because Do No Harm is an ongoing principle, the obligation to monitor and assess risks arises prior to, and extends beyond a specific point of intervention or interaction.[376] In situations with an inherently heightened risk caused by, for example, an active conflict or frequent environmental disasters, the assessment must be regularly reviewed to account for new factors in real-time.

After the risk is identified and the likelihood and severity of its realisation is evaluated, steps should be taken to manage the risk by either **implementing measures to reduce or counter the risk** or, where necessary, deciding to **pause or cancel the intervention** until a change in circumstances. Potentially harmful activities must not be pursued unless the risks have been adequately mitigated. See GRC's Starvation Mobile App 'Risk Assessment Tool' and 'Witness Risk Checklist' for guidance on identifying, assessing, mitigating, and managing risks during investigations and interviews.

Trauma-Informed Approach

Trauma is **an emotional response to a subjectively terrifying event**. Unfortunately, it is not uncommon for individuals that have suffered violations and abuses, including but not limited to in (post-)conflict environments – for example: victims, witnesses, suspects,[377] fixers, interpreters – to have a history of trauma.[378] Even if the cause is unrelated to the subject matter of investigation or documentation, an emotional response can nonetheless be triggered by reminders of the initial event or mere association with someone else who experienced trauma. This may, in turn, affect how they react to questions.

An adequate understanding of what trauma is and how it manifests itself[379] can effectively reduce, and possibly avoid causing harms to a trauma victim. A trauma-informed approach must be applied in all stages of interviewee engagement.

Trauma is highly individualised.[380] As such, the situation and the needs of each interviewee must be **assessed in advance and on an ongoing basis** for the duration of engagement. In particular, steps should be taken to prevent the re-traumatisation, especially of vulnerable witnesses such as children and victims of sexual and gender-based violence.[381] Procedures should be put in place to allow referrals to the appropriate experts, trauma victim support structures and protection mechanisms at the national and international level, and a continual awareness of whether proceeding with an intervention or aspects of an intervention may be causing harm and should therefore cease temporarily or permanently.

During an interview, practitioners should seek to **recognise the symptoms of trauma and the role it plays in how the interviewee may perceive and process the events and the investigation or documentation**. For those who have lived through the event under investigation, their memory may be fragmented, non-linear, incomplete, and distorted by intrusive flashbacks, if not entirely lost.

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[376] PILPG Handbook, p. 45.

[377] Apart from other past experiences, suspects could also sustain trauma during the perpetration of a crime. Amnesia of traumatic experiences with delayed recall for all or parts of the trauma has been noted after committing murders. See D.L. Schacter, 'Amnesia and Crime: How Much Do We Really Know?' (1986) 41 American Psychologist 286.

[378] American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (2013), diagnostic criteria (re stressors) for PTSD. See also WHO, International Classification of Diseases (ICD-11) (2022), 6B40 Post traumatic stress disorder.

[379] There is a wealth of resources on trauma, amnesia, and criminal justice, some of which are cited in this section. As the research advances, certain guidance in this manual may need update. Practitioners are encouraged to consult specialists in the specific areas relevant to their investigation, or contact GRC at info@globalrightscompliance.co.uk.

[380] People experienced the same event are not necessarily all traumatised. It is entirely possible that an individual was not **subjectively** terrified even though the incident itself was not physically or emotionally harmful. Similarly, not all people with a history of trauma would develop PTSD which entails specific impact on their mental status and behaviours. Cf. WHO, International Classification of Diseases (ICD-11) (2022), Disorders specifically associated with stress. Practitioners must not pigeonhole all survivors as 'traumatised' or 'PTSD patients' in lieu of individual assessment.

[381] See Part 3: A framework for reparation research, Gender-Specific Considerations, and Children-Related Investigation.

Understanding the mechanics of trauma can help with identifying and employing the right technique that would both avoid harm[382] and retrieve the repressed memories. For detailed guidance, see Part 5: Testimonial information.

Practitioners themselves may suffer second-hand trauma due to intensive or prolonged exposure to aversive details of traumatic events.[383] This would affect their wellbeing and could risk the quality of documentation or investigation (see Combat Bias). For events involving gruesome or horrific contents, considerations should be given to:

- who needs to be exposed (e.g. sparing unnecessary personnel);
- how information is assessed (e.g. playing videos with unknown content in a small window on mute, switching on settings on online searches where content is blurred and muted until needed to be checked to avoid exposure to unnecessary / irrelevant material);
- for how long (e.g. rotating interviewers on triggering topics); and
- how often (e.g. avoiding unnecessarily continuous review of gruesome evidence).[384]

Team leads should familiarise themselves with the risk factors[385] and symptoms of secondary traumatic stress,[386] and detect and intervene in time to prevent harm.

Victim-Centred Approach

A victim-centred and participatory method is essential throughout the entire reparations process, including the documentation phase. By adopting a victim-centred approach, practitioners can help ensure that victims become active participants in the reparations process, including by recognizing victims' rights, acknowledging their experiences and perspectives, and setting expectations.

A victim-centred approach seeks to **empower the victim by prioritising their rights, needs and preferences for reparations**.[387] Victim participation can contribute to ensure that reparations are **accessible** to all victims,[388] help determine the **types of violations that require redress**, secure the **meaningfulness** of reparations, and **offer some relief**.[389] To ensure that no victim is left behind or excluded, practitioners should aim at documenting the experiences of vulnerable and marginalized groups and individuals. See Annex III: Template questionnaire to assess victims' reparations preferences and understandings of justice.

Practitioners should also identify **the concerns and obstacles** identified by victims, including lack of security conditions, lack of economic resources, and fear of retaliation.[390]

The victim-centred approach is relevant in the **interview process.** It includes obtaining their informed consent (see Rule 5: Obtain Informed Consent), ensuring appropriate levels of confidentiality (see

[382] PILPG Handbook, pp. 32-35.
[383] C. R. Figley, 'Catastrophes: An Overview of Family Reactions' in C. R. Figley and H. I. McCubbin (eds), *Stress and the Family: Vol. 2. Coping with Catastrophe*, p. 10; American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (5th edn, APA 2013), diagnostic criteria (re stressors) for PTSD. This can be in addition to other stressors, e.g., challenging environment or condition, overwhelming workload, fatigue, isolation/loneliness, and harassment or discrimination.
[384] See E. Baker et al., 'Safer Viewing: A study of Secondary Trauma Mitigation Techniques in Open Source Investigations' (2020) 22 Health and Human Rights Journal 293; P. Q. Brady, 'Crimes Against Caring: Exploring the Risk of Secondary Traumatic Stress, Burnout, and Compassion Satisfaction Among Child Exploitation Investigators' (2017) 32 Journal of Police and Criminal Psychology 305, 308.
[385] J. M. Hensel, C. Ruiz, C. Finney, and C S. Dewa, 'Meta-Analysis of Risk Factors for Secondary Traumatic Stress in Therapeutic Work with Trauma Victims' (2015) 28 Journal of Traumatic Stress 83 (identifying risk factors of low organisational support, heavy caseloads, more frequent encounters with trauma victims and high caseload ratio); P. Q. Brady, 'Crimes Against Caring: Exploring the Risk of Secondary Traumatic Stress, Burnout, and Compassion Satisfaction Among Child Exploitation Investigators' (2017) 32 Journal of Police and Criminal Psychology 305, 315 (identifying risk factors of high workload demands, inadequate technological resources, lack of collegial and supervisory support).
[386] See, e.g., Brian E. Perron and Barbara S. Hiltz, 'Burnout and Secondary Trauma Among Forensic Interviewers of Abused Children' (2006) 23 Child and Adolescent Social Work Journal 216; Lisa M. Perez, Jeremy Jones, David R. Englert, and Daniel Sachau, 'Secondary Traumatic Stress and Burnout among Law Enforcement Investigators Exposed to Disturbing Media Images' (2010) 25 Journal of Police and Criminal Psychology 113 (reporting the relevance between greater exposure to disturbing media and higher levels of secondary traumatic stress); Noreen Tehrani, 'Extraversion, Neuroticism and Secondary Trauma in Internet Child Abuse Investigators' (2016) 66 Occupational Medicine 403 (reporting a higher incidence of secondary traumatic stress in female, introverted and neurotic investigators of internet child abuse).
[387] Remarks by Special Representative Patten at the High Level Consultation of ICGLR Ministers of Gender and Justice on the Implementation of the Kampala Declaration, 27 November 2019; Draft Murad Code, principle 1.1.
[388] Guidance Note of The Secretary-General Reparations for Conflict-Related Sexual Violence, United Nations, June 2014 (UNSG 'Guidance Note Conflict Related Sexual violence'), p. 10.
[389] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, , A/69/518, 2014, para. 92.
[390] UNSG 'Guidance Note Conflict Related Sexual violence', p.11.

Rule 6: Protect Confidentiality), providing adequate protective measures (see Risk Management), and **managing victim's expectations** in relation to reparations.[391]

Practitioners engaging with victims should work to ensure that victims are well-informed and thus able to set realistic expectations of reparations in their particular cases. Practitioners should provide clear information about their roles, capacities, limitations, and the specific support they can provide to victims, ensuring clear and transparent information exchange.[392] Practitioners engaged in documentation efforts aimed at securing reparations should approach their role with sensitivity, as it carries the risk of misunderstanding the purpose of the investigation and potentially raising unrealistic expectations among victims.

Here are some strategies for practitioners seeking to adopt a victim-centred approach to setting reparation expectations:[393]

- Encourage realistic expectations through clear communication, including about your role.[394] For example, if you are involved in documentation, emphasize that your role is to document and gather information and that you have no power to provide guarantees for the delivery of the reparations.
- Highlight the importance of documenting victims' experiences and the harm they have suffered and explain how this information contributes to advocacy efforts for reparations and may support potential reparations claims. Be realistic about the role documentation plays.
- Where they exist, outline the avenues for potentially seeking reparations in a victims' specific context, detailing the advantages, disadvantages, and likely outcomes. Acknowledge that immediate redress channels might not be available.
- Inform the victim about which reparation measures are feasible and which are not, while emphasising any challenges that exist, including in regards to implementation. Where there is no precedent for actual reparations being provided, make this clear.

Referral pathways to various support services and networks for the victims to access should be identified or established where possible.[395] The recommendation of a support service should be based on the individual characteristics and needs as expressed by the victims.[396] The purpose of identifying referral pathways must be understood as providing options and facilitating informed choices. After that, the victim's choice or dismissal of one or all options should be respected. A practitioner determination of what is best for them undermines survivor empowerment, which is at the heart of the victim-centred approach.

A victim-centred approach calls for **a genuine effort to listen**. If a survivor has expressed prejudice, animosity or distrust towards a certain individual or group, it is not the practitioner's place to judge or to educate. Rather, such comments should be noted and should inform the practitioner's future activities.

Rule 2: Maintain Minimum Standards

In investigating or documenting for reparations purposes, practitioners should adhere to a set of minimum standards for record-keeping and chain of custody in case the information gathered may also be used as evidence for criminal accountability purposes or in judicial proceedings in the future. This is not only to safeguard the legal, ethical and efficient conduct of the process, but also to ensure

[391] Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, , A/69/518, 2014, para. 77.
[392] L. Moffet, Handbook on Civil Society Organizations and Donors Engagement on Reparations. Reparations, Responsibility & Victimhood in Transitional Societies. Queen's University Belfast.
[393] REDRESS. A Survivor-centred approach to Seeking Reparation for Torture (2024).
[394] REDRESS. A Survivor-centred approach to Seeking Reparation for Torture (2024), p.20.
[395] Directive 2012/29/EU, Article 8(2), Article 9, Preamble, paras. 38, 40; Istanbul Convention, Article 56(1)(c); International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, pp. 14, 16, 94, 164; Istanbul Convention Explanatory Report, paras 138-142, 255; Alberta Justice and Solicitor General, Sexual Violence Police Advisory Subcommittee, Best Practice Guide for Law Enforcement Investigations into Sexual Violence (Government of Alberta 2018), p. 10; Hate Crimes Training Curricula, pp. 50, 54.
[396] OHCHR Protection of Victims of Sexual Violence: Lessons Learned, pp. 4-5. Best practice suggests that when criminal justice actors engage with victims of rape and other acts of sexual violence, they do so knowing what discrete formal and informal social, legal, medical services and other services are available for the victim in order to ensure they provide the most suitable referral options. International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 98; Istanbul Convention Explanatory Report, paras 146-148; OHCHR, Protection of Victims of Sexual Violence: Lessons Learned, p.15.

the outcome – both the evidence and the findings – can withstand scrutiny. Records should include the reasons for or the context in which the materials were collected.

For recommendations on how to collect information and adequate record keeping see Record Keeping and Chain of Custody in GRC's Starvation Mobile App.

Rule 3: Maintain Impartiality and Objectivity

Maintaining impartiality and objectivity is vital to the reliable documentation of international violations.[397] To achieve this, practitioners must function independently without direct or indirect external influences, and strive to uncover the truth about an allegation, taking into account credible and reliable evidence based on their fair and objective assessment.[398]

For a detailed explanation, see the following sections in GRC's Starvation Mobile App: Combat Bias, Focus on facts, and Do not dismiss information.

Rule 4: Know Your Limits

All practitioners face limits. A clear and realistic understanding of what you **cannot** or **should not** do is indispensable to adequate preparation and an effective execution of the documentary or investigative effort.

First and foremost, practitioners must know the scope of their **mandate**. It sets out the temporal, geographical and/or subject-matter parameters of the evidence collection as well as the nature of their activities (e.g. general fact-finding about human rights violation, documentation efforts for securing reparations, or evidence collection for a specific criminal court), which should guide the formulation of the documentary or investigative plan.

Similarly, practitioners should assess the extent of their **power**. A realistic assessment of the security risks and possible political inference would allow Practitioners to make the best preparation possible.

Practitioners should be aware of the limits of their **competence**. On an individual level, practitioners need to be cognisant of their operative expertise, cultural understanding and technical skills.[399] For example, in the context of criminal accountability efforts, victims should be interviewed comprehensively by competent investigative authorities. Civil society organizations interested in supporting criminal accountability efforts should take general statements and avoid conducting detailed interviews that may unnecessarily re-traumatize a victim or risk inconsistencies with later formal interviews. Instead, these organizations can best support efforts by identifying and locating victims and witnesses, mapping victimization and alleged crimes, and preserving this information.

On a team level, the availability of personnel (including interpreters), skillset and equipment are also relevant to the competence assessment. If practitioners are concerned that the investigation would require steps beyond their competence, even where the investigation is carried out for a purpose other than the pursuit of criminal accountability (e.g., documenting and publicly reporting on human rights violations), investigative action should be stopped and advice sought from appropriately qualified personnel.

Last but not least, all investigations face certain **budgetary** and **logistical** limits. This would constrain, for example, the depth and reach of the investigation as well as the type of evidence collected. Strategies on case selection and prioritisation should be made with these limits in mind.

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[397] See also ICRC, Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice, para. 124.
[398] Council of Europe, 'Effective investigation. Stemming impunity' in Analysis of selected areas of the Prosecution pillar of the Guidelines of Recommendation CM/Rec(2016)4; Groome Handbook, Chapter 2, pp. 38, 43; Article 11, Statute of the Commission for the Control of Interpol's Files; OHCHR, Human Rights Standards and Practice for the Police, Expanded Pocket Book on Human Rights for the Police, Professional Training Series No. 5/Add.3, p. 17.
[399] ICRC, Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice, paras. 130, 138.

Rule 5: Obtain Informed Consent

Practitioners must obtain the informed consent of all victims and witnesses prior to any engagement with them, i.e. before they are interviewed, photographed, referred to any support services, or have their information recorded or shared with third parties (including, domestic criminal investigation departments, international courts/tribunals like the ICC, etc).[400] Without their consent, practitioners **must not** collect any information from them. Consent must be informed, voluntary and explicit.[401] If in doubt as to whether the consent is given freely, practitioners should seek expert advice.

For the consent to be **informed**, the victim or witness must be fully aware of the investigative or documentation process, confidentiality procedures, the intended use of the gathered information, any potential risk and/or benefits, and the consequences that may arise as a result of their interaction with the process. Where, due to age or intellectual disabilities, a person cannot provide informed consent, consent must be obtained from a legally authorised representative, such as a parent or legal guardian.[402]

For the consent to be **voluntary**, the victim or witness must not have been coerced or put under any pressure to provide consent. Victims and witnesses must be free to withdraw their consent at any time.[403] Obtaining **explicit consent** requires that the informed consent obtained is unequivocal and recorded; preferably in writing, with the signature of the victim or witness, or orally, by means of audio or video recordings, after they have been informed as set out above.[404]

Rule 6: Protect Confidentiality

To protect confidentiality, at its core, is to protect the information gathered and, where necessary, the involvement of certain individuals in the investigation. Confidentiality concerns and measures to protect personal data and information must be discussed with the victim/witness when attempting to gain their informed consent for their participation and any ongoing activities. This requires practitioners to:

- **ask** the victim/witness if they have any specific concerns or suggestions regarding confidentiality (e.g., how they would like to be contacted in a way that respects their privacy, where they would like interviews to take place, and how they would like to be approached in public, if at all);[405]
- **explain** any conditions and limitations of confidentiality such that the victim/witness understands how the information may be used, including possible disclosure to criminal justice authorities or investigative mechanisms;[406] and
- **ensure** the victim/witness understands the risks of providing information and **inform** about procedures in place in the possible event of a security breach.

[400] PILPG Handbook, p. 23.
[401] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 89; PILPG Handbook, pp. 25-27.
[402] PILPG Handbook, p. 23; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, pp. 89-90.
[403] PILPG Handbook, p. 23.
[404] PILPG Handbook, p. 24.
[405] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 95.
[406] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 96.

PART 5: COLLECTING AND PRESERVING INFORMATION

This section sets out the main types of information that practitioners can collect while researching and documenting for reparation purposes and provides guidance on how to preserve such information.

Based on its content and its medium, information is broadly categorised as **testimonial**, **documentary**, **physical**, and – increasingly pervasive in the recent years – **audio-visual** and **digital**. This categorisation is not scientific and many of these categories overlap. For example, testimonial information could be an audio-visual recording. The categorisation is a practical shorthand for ease of reference.

In the course of researching for reparation purposes, practitioners may come across a large amount of valuable information in various forms. Some may only serve as a lead to better evidence (e.g., a Facebook post naming a local farmer whose cattle was raided). Other information may be used in prospective judicial proceedings; where this is the case, the collection and preservation of this information should be in line with accepted international standards and practices. In doing so, the information stands a chance to be also used in judicial proceedings, including, for example, for criminal accountability purposes in the future. Although much of the information collected by practitioners might not be used in judicial proceedings, practitioners are still encouraged to follow these standards as a matter of good practice, especially for any key information.

As noted above, practitioners are encouraged to map available avenues for seeking reparation or other forms of accountability as early as possible and, in so doing, determine what types of information or evidence might be necessary and what standards would guide admissibility. This can inform practitioners' decisions as to what information to collect, how to collect and preserve it, and how and if to adjust the scope of investigation, including to safeguard against the pitfall of over-documentation.

Testimonial information

Testimonial information is a document[407] or an audio-visual recording[408] containing **the recollections, observations, or opinions given by an interviewee**.

An interviewee can be a victim, an eyewitness, a community leader, an insider, a suspect, an investigator, or an expert. An interviewee could have sworn to tell the truth ('under oath') or not. Before the ICC, the admission of oral testimony given in person is the norm,[409] and the admission of written testimony[410] without oral testimony is the exception.[411]

The **investigative value** of this information varies depending on its contents. In a starvation investigation, potential interviewees include victims, eyewitnesses, family members, community members, healthcare professionals, humanitarian relief workers, civil society or international

[407] ICTY Manual on Developed Practices, pp. 79-81.
[408] See, e.g., ICTY Victims and Witnesses Section, Information Booklet for ICTY Witnesses (2007).
[409] Rome Statute, Article 69(2). The witness can provide in-person testimony by physically appearing inside the courtroom ('*viva voce*') or via video-link. See ICC Rules of Procedure and Evidence, Rule 67.
[410] For a written statement to be admissible without oral testimony (ergo cross-examination), a list of strict criteria must be met. When the witness is alive and well and could otherwise testify in person, the statement must be taken anew by a court-designated officer so that the questions are not unfairly advantageous for the tendering party. If the witness has since passed or become too sick to testify or be interviewed, their prior statement must clear certain formality thresholds so as to be admitted. See ICC Rules of Procedure and Evidence, Rule 68. The formality provisions therein should be considered as good practice especially when the viability or availability of the witness is of concern.
[411] In order to expedite the proceedings, the admission of written statement in lieu of examination-in-chief or oral testimony is increasingly common at the ICC, especially for cultural/political background evidence, repeated evidence, victim impact evidence and character evidence. Only evidence that goes to proof of the 'acts and conduct' of the accused must undergo the scrutiny of a live testimony. ICC Rules of Procedure and Evidence, Rule 68(2)(b).

organisation staff, public or private service providers, government or military officers, thematic experts, journalists, insiders, etc. The testimony of people who were not directly involved in the investigated incident can still be useful for, for example, bias control, and pattern demonstration.

Practitioners can consult – not rigidly follow – the templates annexed to this Guide to ensure that all basic aspects have been covered in reparations-oriented interviews.

Interview Do's	Interview Don'ts
Adopt a conversational tone and use non-technical language.	Ask a rapid series of questions and use formal interrogation language.
Discuss privacy and confidentiality early. Give them a reason to trust you.	Inform of any possible mandatory disclosures after the account is given.
Outline your role and limitations early. Be frank about what you cannot do or promise to achieve. Keep a professional boundary.	Make a promise you cannot keep. Blur roles to identify with the interviewee or to build rapport.
Give the interviewee some control over the interview (e.g. when/ where to meet, when to take break, any preference as to the interviewer, who to bring as support). Know when to take breaks for yourself, the interpreter and the interviewee.	Dictate every aspect of the interview. Categorically deny any request for an interviewer of a specific gender, ethnicity or religious background, or the presence of a support person.
Listen attentively with sympathy. Be comfortable with tears, silences, and anger. Reassure that they are not upsetting you. Debrief the interpreter, if using one, beforehand.	Frequently interrupt for clarification. Display disbelief, irritability, impatience, or any unduly strong reaction.
Ask the difficult questions and explain why they are asked. Inform the interviewee about when the most difficult subject will be broached (e.g. at the end of the interview) so they are aware and may thus be less tense during the rest of the interview.	Avoid difficult questions or beat around the bush for too long. Ambush the interviewee with the difficult questions.
Allow the interviewee to tell the story how they please (e.g. 'what else happened?') and focus on the narrative and the elements of the crime or violation.	Expect or demand a chronologically linear memory (e.g. 'what happened next?').
Ask open questions with no indication of presupposition (e.g. 'how did you respond?')	Ask questions that are, or can be perceived as, judgmental (e.g. 'why didn't you…?', 'did you…?'). Make a judgmental comment.

Documentary information

Documentary information includes written materials, such as those produced by virtue of a documentation process (e.g., a list of suspects compiled by the police upon the investigator's request) or generated in the course of a provider's normal conduct of business (e.g., an incident report in the police archive). Documentary information can be official documents, logbooks, financial and personnel records, court files, prison records, legal gazettes, maps, medical records, business records, maps, and city plans.[412]

Documentary information that may be useful to show starvation offences and the nature and extent of harm suffered by victims include official documents, non-official documents, medical certificates, hospital or feeding centre records, checkpoint documentation, prisoner records, official archives of

[412] Nystedt et al. Handbook, p. 63.

health departments (particularly those on annual mortality rates, previous nutrition surveys, livestock and harvest statistics), military reports, and NGO reports.[413]

See Part 6: Case Studies for examples of relevant documentary information in the context of reparations.

As with testimonial information, the handling, collecting and preserving of documentary information should be conducted according to the Six Essential Rules, with specific care to ensure confidentiality of documents related to starvation victims. There may also be domestic regulations restricting the access to sensitive or private documents such as medical records, autopsy reports and death certificates. Even if these documents are in fact easily accessible, practitioners should remain aware of any legal hurdle which may render the collection illegal and hinder the use of the document in subsequent accountability processes.

Physical information

Physical information refers to tangible objects, including materials detected through scientific means.[414]

In a starvation or starvation-related investigation and/or reparation documentation process, physical information may include:

- remnants of attacks on humanitarian aid, including weapons and ammunition fragments;
- remnants of landmines used on agricultural fields;
- biological samples such as blood, hair, bones, and other human remains;
- hard copies of medical records, post-mortem analysis, agricultural reports, maps, etc.;
- physical measurements of starved people, wounds and physical injuries;
- electronic devices such as GPS containing data on waypoints, routes and dates.[415]

Physical information can be vital, but **the general rule is that documenters without the relevant competence should not collect or remove it, particularly in the case of *in situ* evidence[416] where there is risk of harm**. For example, abandoned and unexploded ordnances are notoriously dangerous. Similarly, human remains may be hazardous.

It is vital that **only trained health and forensic professionals** collect, process and analyse medical or forensic information. **If you come across physical evidence that you think is related to starvation, contact the necessary professionals.**

Practitioners can, however, **protect the evidence or document it without removing or touching it**. This can be simply cordoning the area off and refraining from contaminating the evidence or the site, or by taking photographs or videos of the site, taking detailed notes, measuring the scene, or using witness documentation apps.

For further guidance on approaching physical evidence for those practitioners with the competence to do so, see GRC's Starvation Mobile App 'Physical Evidence Collection Checklist'. GRC's Starvation Mobile App also offers a 'Physical Evidence Log' that provides a template to record key information related to physical evidence.

Digital information

Digital information refers to the **information transmitted or stored in a digital format**.[417]

Typical digital information relevant to starvation include (i) electronic health records; (ii) pictures and videos showing, for example, physical state of malnourished victims; (iii) aerial photos and satellite

[413] Oxfam Practical Guide on Food Scarcity and Famine, p. 19.
[414] PILPG Handbook, pp. 89-96. See also *Katanga*, Decision on the Prosecutor's Bar Table Motions, para. 24(d); Nystedt et al. Handbook, pp. 62-63; *Kordić & Čerkež,* IT-95-14/2-T, Decision on Prosecutor's Submissions concerning 'Zagreb Exhibits' and Presidential Transcripts, 1 December 2000, para. 44.
[415] PILPG Handbook, p. 90.
[416] Evidence found in its original place.
[417] Council of Europe, Electronic Evidence Guide: A Basic Guide for Police Officers, Prosecutors and Judges, p. 11; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 150.

imagery of, for example, troops or civilian population movements; (iv) video footage of attacks on OIS or humanitarian aid convoys; (v) audio recordings of planning meetings of military leaders; (vi) or other online content from social media or other sources.

Digital information can play a significant role in supporting claims for reparations by providing corroborating information, documenting violations, and establishing a compelling case. For example, satellite imagery or GPS data can be used to visualize the locations of starvation and starvation-related violations and the destruction of property, helping to establish the connection between the violations and their impact on individuals and communities.

The collection and preservation of digital information is not fundamentally different than that of other types of information. In addition to the diligent documentation of chain of custody and the metadata (e.g., the identity of the source and the author), it is also important to document the media the digital information came in (e.g., the brand and storage size of the USB key, the handwritten markings on the DVD casing), the original file name containing the information, and its format. The original copy ('golden copy') should be left untouched and carefully protected against deliberate or inadvertent alteration. This can be done by encryption, password protection, or read-only protection. Analysis of the digital information should only be made on a working copy of the original copy.

Storage system and chain of custody

Before information starts to be collected, Practitioners must consider where and how it is going to be stored and organised. The storage system can be manual, digital, or a combination of both. To determine which option is the best suited, it is worth conducting a risk assessment, the applicable laws and regulations regarding information and evidence storage, and your capacity and resources.[418]

Depending on how the information will be used, storage can be crucial. For example, in the context of criminal proceedings, the integrity of the investigation itself, including the storage system used, could be examined. If the storage was not compliant with best practice, the court may not rely on the information gathered. Moreover, from the moment of its collection to the time information may be used in court, there should be proof of secure, continuous possession from each custodian of the evidence in question. An unbroken chain of custody is highly important when determining the admissibility of evidence for judicial proceedings.[419]

GRC's Starvation Mobile App provides a sample chain of custody form for practitioners to record all necessary information.

Kit and Folder

Before each mission, an **Investigative/Documentation Kit** should be put together with the basic tools, files and recording logs that are necessary for the effective retrieval and organisation of information. The contents could vary depending on the practitioner's level of expertise and mandate of the investigation or research.

For the overall investigation, practitioners should use an **Investigation/Documentation Folder** to catalogue every record of investigative activities and copies of the information collected.[420] The folder can be digital or physical. The contents can vary depending on the complexity of the violations involved and the expected amount of information.

During the investigation, practitioners are recommended to keep two separate notebooks for **objective** details of the investigation and the discovery and for **subjective** observations and analysis. This is both to maintain a separation between the facts and opinions and to account for potential disclosure obligations during any future criminal proceedings.[421]

[418] International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, p. 203.
[419] ICTY Manual on Developed Practices, p. 28.
[420] Groome Handbook, p. 64.
[421] Nystedt et al. Handbook, p. 50

PART 6: CASE STUDIES

These case studies are designed to aid practitioners with developing a research plan, structuring an investigation, preparing before an interview, and developing interview questions. The cases are drafted simply, and the prompts follow the structure of the reparation research framework presented above.

As emphasized throughout this guide, practitioners will need to specifically tailor and adapt their research to the actual circumstances of the cases they are investigating and the context in which they are operating.

The questions included for each case should be seen as illustrative and indicative only; they are far from exhaustive. Key questions are in green. Follow-up questions, seeking to determine the answer to these key questions, follow. Many of the answers to these questions may be able to be gleaned from interviews, e.g. testimonial information, while others might require an examination of documentary, physical or digital information. For victims' needs and preferences, practitioners might prefer to conduct surveys, focus groups or individual interviews. When developing a research plan, practitioners should consider what types of information may be available, what different methods for gathering information are available, and what types of information may be most useful to documenting, corroborating, or complexifying certain, key elements of the research framework.

Remember: For interviews, it is important to ask during interviews **how** the witness / survivor / victim knows the information they are presenting.

CASE STUDY 1:

Al-Salam farm is located in a village within a country experiencing a non-international armed conflict between the government and a non-state armed group known as X. The farm employed dozens of workers who lived and worked on its premises. The farm is co-owned by several partners.

The farm's crops served the needs of the owners, workers, and their families, as well as being sold in agricultural markets.

A fighter-jet belonging to an ally of the government bombed the Al-Salam farm, resulting in the total halt of the farm production and forcing the owners and workers to flee to other areas perceived as safer.

The farm stopped functioning after the attack, and owners are unable to make the necessary repairs. News reports stated that the attack on Al-Salam farm was one of over thirty attacks on farms in the same village during the five years of the armed conflict.

Examples of information that could be collected while investigating Case Study 1

- **Testimonial information:**
  - A witness statement (signed) or a summary, for example from the owners of the farm, workers who were there at the time of the attack, or community members that relied on the farm's food.
  - An audio recording of a witness or survivor account.

- **Documentary information:**
  - Copies of documents that shows the size and value of the farm, the amount of production or the repair costs.
  - Copies of prices of the repairs of the farm or quotes for the repairs.
  - Government reports on the economic situation in the country.
  - Copies of incomes or salaries paid to workers.
  - Sales invoices or receipts of purchase price of any objects or equipment damaged.
  - Medical evidence or records or physical or psychiatric harm caused to victims.
  - Sales invoices of previous value of sales of produce to market – ideally showing a record of these sales over time.

- **Physical information – remember: the general rule is not to touch physical evidence:**
  - Remnants of the bomb(s) used.
  - Remnants of the damaged objects.

- **Digital information:**
  - Satellite imagery, google earth, or google map, wikimapia, photographs, and videos that capture the state of the farm before and after the attack (any picture meta-data used is useful to verify the accuracy, time or location of the audio, photographic, or visual)
  - Photographs of the bomb remnants.
  - Any NASA Fire Firms data – available freely online.

- **Secondary source information:**
  - UN Reports on the economic or food security situation of the area.
  - IPC reporting on food security.
  - Perpetrators' media reports that may acknowledge their responsibility for the attack (for example, a spokesperson saying that the attack was on military camp belonging to armed group X)
  - Media reporting to show scale and possible perpetrator knowledge of the situation.
  - Credible NGO or humanitarian reporting.

Examples of key questions to guide information gathering while investigating Case Study 1

WAS AN INTERNATIONALLY WRONGFUL ACT COMMITTED?

- **Information about the farm**
  - Where is the farm exactly located?
  - What was the date and time of the attack?
  - What size is the farm? Are there any markings on the buildings, or machinery which would indicate it was a farm?
- **Information about potential military targets**
  - Was the farm being used exclusively by combatants or in direct support of military action?
  - Was there any presence of a military target - military personnel, military vehicles, military equipment - in or close by the farm at the time of the attack? If yes, what was it and where was it exactly?
  - Was this attack part of a wider military campaign? Did this attack carry a significant military advantage? Did the attack contribute to a specific action causing the total or partial destruction, capture or neutralization of a possible military objective?

- **Information about the attack**
  - Was there any warning before the airstrike, if so by what means?
  - Where did the bomb exactly land? On the water well/pump? The electricity generator?
  - How many bombs were dropped and did all explode on impact?

- **Information about the impact of attack**
  - How was the farm used or relied upon by civilians?
  - How were civilians affected by the attack?
  - Could the farm be considered as indispensable for the survival of civilians in the prevailing circumstances? How?
  - Are there any reasons that the government or the government ally would have known that this was a civilian farm or that it served civilians? What were those reasons?
  - What measures, if any, did the government take after the attack to ensure that civilians got alternative supplies of food?

- **Information about other, related attacks or actions**
  - Has this farm been damaged previously, or has it been damaged since through direct or indirect strikes or military combat?
  - Have similar farms or other related objects in the surrounding area been damaged previously or since the attack?
  - Is there any evidence indicating that the perpetrator used this or other attacks on farms or other indispensable objects as a bargaining tool to obtain a military advantage or pressure an opponent to surrender?
  - Is there any evidence that indicates that the attacker knew their conduct would almost certainly cause the starvation of civilians by depriving them of objects indispensable in the ordinary course of event? (e.g. was the widespread media reporting of the actual or predicted impact, was there widespread media or publicly available information prior to the attack that highlighted knowledge or awareness of the indispensable nature of these objects?).

WHO IS RESPONSIBLE FOR THE INTERNATIONALLY WRONGFUL ACT?

- **Information about before the attack**
  - Which warring parties are present in the area of the farm? Is it known who controls the area? How long has this control been held and who controlled it prior?
  - Was the farm used by X armed forces or any other armed forces? If yes, for how long and to what degree was it used and how?
  - Was there a dual use of the farm for civilians and combatants?
  - Is there any reason to think the farm might have been used in support of military action? If so, in what way did it support military action and by whom?
  - Where there any hostilities at or near the farm when it was harmed? If yes, how many kilometres / miles / metres / distance away? How active an area was this during the timeframe?

- **Information about the attack itself**
  - Are there any hypotheses as to why the farm was targeted?
  - Who launched the airstrike?
  - Are there any remnants of the weapons still present at the scene? If not, who removed the evidence?
  - What type of ammunition was used in the attack? If so, what type? Is it known which warring party use this type of weapon? If so, who?

- **Information about after the attack**
  - Have there been any claims of responsibility or admissions made by individuals or groups regarding the attack?

- Were there any statements made by the party who committed the act about the harming of the specific farm or OIS in general, whether before, during or after the time of the act?
- Has any investigative body conducted inquiries to identify the responsible party?

WHO ARE THE VICTIMS?

- **Information about those harmed**
  - Who were the individuals directly affected by the incident? (Note: Gather information about them, including their profession, age, place of residence, gender and contact information)
  - Who was most impacted by the attack? Why?
  - What is the total number of civilians who relied on the farm as a source of food either directly as sustenance or by way of economic livelihood?
  - Who owned the farm or equipment? Were there any loans, private or commercial, on any of the equipment or objects attacked?
  - Who are the individuals or groups within the community particularly vulnerable to food shortages after the attack?
  - Who in the community experienced economic hardship such as loss of job or income or loss of equipment as a result of the attack?

WHAT IS THE NATURE AND EXTENT OF THE HARM SUFFERED?

- **Information about the impact of the attack on victims**
  - Did this attack have psychological impact on civilians? Who? What were the impacts?
  - Did the attack cause any physical harm to civilians? Who? What were the impacts?
  - Did the attack cause any known environmental damage to the farm or surrounding area?
  - How many civilians lost their jobs as a result of the attack? List who.
  - How many civilians lost their source of food or income? List who.
  - What were the consequences of the airstrike on the wider community? What immediate effects did the airstrike have on the beneficiaries of the farm, for example in terms of food supplies? How did it impact them in the long term?
  - Did anyone have to relocate to a new area? Who? If people had to relocate, how did the owners, workers and their families experience the process of relocating to new communities? What were the financial costs associated with the move?
  - Who owned the farm? How big was the farm? What was its value?
  - Was any equipment or buildings damaged or destroyed? Have attempts been made to repair the objects damaged or financial quotes or calculations been made on the cost of the repair? Is it known how long it will take to repair the objects? How old was any of the equipment that was attacked?
  - If remnants of the weapons are still present on the farm, is it known how to safely remove them, or any financial costs included in clearing the damage and weapons remnants?

- **Information about factors that may have exacerbated harm**
  - What was the IPC classification of the area at the time of the attack?
  - What was the annual production of the farm? What crops did it use to produce?
  - Where was the production being sold? Was there am alternative in the market? Was there a noticeable change in price of the crops?
  - Were there any alternative farms expected to be accessible to the community at the time when the farm was harmed? If so, what were these alternatives? Where were they located? How difficult were they for the community to access?

WHAT ARE VICTIMS' NEEDS AND PREFERENCES?

- **Information related to justice, broadly**
  - What does justice mean to the individuals affected? And to the community in general?
  - What would be the ideal response from authorities, institutions, or society in addressing the harm endured?
  - Have victims received any assistance or support from organizations, institutions, or individuals since the violation occurred? (If yes, gather information about the type of support.) Have these measures fulfilled the needs of the victims?
  - What are the needs of the wider community affected by the attack on the farm?

- **Information related to types of reparation**
  - What form of reparation is the most crucial?
  - What would be an appropriate form of reparation for the families of those killed or for those injured in the airstrike?
  - If compensation is preferred, what would be a sufficient amount of monetary compensation? What monetary compensation would be a credible remedy for the other victims of the airstrike such as those who lost their jobs, lacked access to food or basic goods, or had their crops go unsold due to the absence of a market?

WHAT, IF ANY, AVENUES ARE AVAILABLE FOR VICTIMS SEEKING REPARATION?

- **Information related to legal frameworks**
  - What national, regional and international laws, regulations, or legal frameworks may apply to the case?
  - Has the country accepted the jurisdiction of any regional human rights court, international criminal court or hybrid tribunal?

- **Information related to reparation avenues**
  - What, if any, reparation or accountability avenues are available at the national, regional and international level?
  - Are there any compensation programs or funds available in the relevant jurisdiction?
  - Are there any complementary avenues where victims can seek support?
  - What are the advantages, limitations, and potential outcomes of the available redress avenue (if any)?
  - What avenues would victims like to pursue? Can the victims access these mechanisms?

CASE STUDY 2:

A civil war erupted in an African country in 2013 between Governmental Forces and armed forces trapping several towns, including BO town, in a siege where civilians were unable to pursue agricultural or other livelihoods. Actual and feared attacks, including massive violence, killings, rape and torture, prevented civilians from developing and harvesting their crops.

In September 2021, a humanitarian aid convoy of three vehicles carrying 121 metric tons of food supplies came under attack while travelling to BO town. The truck was reportedly looted and burned. The convoy team were killed, injured or abducted in the attack.

Frequent changes in areas of control and patterns of retaliatory attacks by armed groups make establishing responsibility for the attack challenging.

Examples of information that could be collected while investigating Case Study 2

- **Testimonial information:**
  - A witness statement (signed) or a summary, for example, from colleagues of the humanitarian aid convoy workers, from residents of the area or living in the besieged area, or from members of armed groups operating in the area.
  - An audio recording of a witness or survivor account.
  - Statements from doctors working in the besieged area.

- **Documentary information:**
  - Official documents issued by the aid agency about the type of aid and the number of beneficiaries that could have benefited from it.
  - Documents used to process people in and out of the siege.
  - Public reports on the economic situation in the country.
  - Checkpoint records or documents.
  - Medical and death records.

- **Physical information – remember: the general rule is not to touch physical evidence:**
  - Remnants of the bomb(s) used.
  - Remnants of the damaged objects.

- **Digital information:**
  - Satellite imagery of the village (possible from before and after the siege, illustrating the impact on agriculture in the area).
  - Photographs of the aid vehicles and their contents prior to the attack.
  - Photographs documenting the aftermath of the convoy attack.

- **Secondary source information:**
  - UN Reports on the economic or food security situation of the area.
  - IPC reporting on food security.

Examples of key questions to guide information gathering while investigating Case Study 2

WAS AN INTERNATIONALLY WRONGFUL ACT COMMITTED?

- **Information about the town under siege**
  - Where is BO town exactly located?
  - What were the conditions in BO town during the civil war? What challenges did civilians face to secure their food supplies?

- Were there any pre-existing problems in the area before the siege and the attack related to food, water, or land access? For example, did hunger or malnutrition exist?
- How was food accessed and how were agricultural activities or other livelihoods pursued?
- What were the main sources of food and other OIS?
- What were the specific threats or challenges faced by civilians in BO town regarding accessing food before, during and after the siege?
- How mixed was the population of the town between civilians and military?

- **Information about the attack**
  - Where was the humanitarian aid convoy exactly located when it came under attack?
  - What was the exact date and time of the attack?
  - What were the circumstances surrounding the attack? (Gather details of the attack on the humanitarian aid convoy.)
  - Was the convoy used exclusively to transport humanitarian aid?
  - Was it visible that the vehicles were part of a humanitarian aid convoy? E.g., were the marked with humanitarian logos?
  - Had the humanitarian organization shared their coordinates with the warring parties to the conflict?
  - Were there any warnings or threats issued prior to the attack on the convoy?
  - Were there any alternative sources of food, water or medicine expected to be available to the community at the time when the aid was obstructed? If so, what were these sources? Where were they located? Who provided them? How difficult were they for the community to reach? Were these alternate sources viable?
  - Is this sort of attack a common occurrence? How frequently is it observed, and over what geographical area? Is there a pattern of this conduct? Why or why not?

- **Information about the siege**
  - How long did the siege last? What type of siege was in place? Partial or total?
  - Were civilians allowed to leave besieged areas?
  - Was humanitarian aid allowed in and out freely? If not, what were the impediments?
  - Was commercial produce, objects indispensable to the survival of the civilian population, livestock allowed to move in and out freely?
  - What, if any, restrictions were in place (taxes levies, filtration depending on identification or allegiance)?
  - Were humanitarian corridors or evacuations permitted?
  - Were checkpoints in play and who managed them? Were those at checkpoints armed?
  - Were all items, specific items or no items restricted from entering or exiting the besieged area?
  - For how long was the area besieged? What were the impacts of the siege on the population?
  - Has the area been besieged before? In what way?
  - If and when the siege lifted, did the civilian population have to move, were they forced to move, or were they able to stay?
  - What is the access to the population who were besieged now?

WHO IS RESPONSIBLE FOR THE INTERNATIONALLY WRONGFUL ACT?

- **Information about before the attack**
  - Were there any incidents prior to this attack that could point to a similar conduct by any armed group?
  - Were there any attempts by governmental forces or other entities to secure the safe passage of humanitarian aid convoys?

- **Information about the attack itself**
  - Who had control over BO town during the siege?

- Are there any specific armed groups known for their activity in the area where the attack on the convoy occurred?
- Were there any indications or evidence suggesting the involvement of a particular armed group in the attack?
- Is there any particular uniform or vehicles they were using?

- **Information about after the attack**
  - Did any armed group claim responsibility for the attack? If yes, which one and what was their stated motive?
  - Could the community members identify the perpetrators involved in the attack?
  - Did the perpetrators leave any evidence or traces behind? For example: ballistic evidence, explosive residues, physical damage to the vehicle?
  - Did the humanitarian organization make any public statements or reports about the incident?

WHO ARE THE VICTIMS?

- **Information about those harmed**
  - Who were the individuals directly affected by the attack on the convoy? (Note: Gather information about them, including their profession, age, place of residence, gender and contact information.)
  - How many beneficiaries were expected to receive the aid the was attacked?
  - How many people were killed, injured, or abducted in the attack?
  - What is the total number of civilians living in BO town? Are there any official records or estimates?
  - Were there any demographic groups within the civilian population that were particularly affected by the attack?
  - Were there any specific vulnerabilities among the civilian population that made them more susceptible to harm?
  - Who experienced economic hardship such as loss of job or income as a result of the siege?
  - Was the community as a whole targeted in the context of siege and/or the attack on the aid? If so, on what grounds? (e.g., political, racial, national, ethnic, cultural, religious, gender reasons, etc)? What statements or information support this analysis?

WHAT IS THE NATURE AND EXTENT OF THE HARM SUFFERED?

- **Information about the impact of the attack on victims**
  - How were the individuals affected by the attack? Who was killed, injured, or abducted? What if any are the physical, material, and psychological consequences for them and their families?
  - What immediate impact did the attack have on the availability of food and other essential supplies in BO town?
  - How did the convoy attack impact the ability of civilians to access food and other essential supplies? How did they manage to get necessary supplies?
  - Since the siege and the attack, have there been any problems in the area related to food, water, or land access? Has hunger or malnutrition come to exist or been exacerbated and how?
  - How has the attack affected the livelihoods of civilians in BO town?
  - Have there been any efforts to provide assistance or alternatives to the victims of the attack?
  - What was the impact of the siege in the community?

- **Information about factors that may have exacerbated harm**
  - How reliant were the population on humanitarian aid, how long had humanitarian aid been delivered to this area? Alternative sources?

- Have there been any disruptions to humanitarian aid delivery to BO town following the attack?
- What was the IPC classification of the towns under siege at the time of the attack?

WHAT ARE VICTIMS' NEEDS AND PREFERENCES?

- **Information related to justice, broadly**
  - Has the siege come to an end? Is it currently possible to establish contact with the population from BO town?
  - What does justice mean to the individuals affected? And to the community in general?
  - What would be the ideal response from authorities, institutions, or society in addressing the harm endured?
  - Have victims received any assistance or support from organizations, institutions, or individuals since the violation occurred? (If yes, gather information about the type of support.) Have these measures fulfilled the needs of the victims?
  - What are the needs of the wider community affected by the attack on the farm?

- **Information related to types of reparation**
  - What form of reparation is most important? Are the victims primarily seeking restitution, compensation, satisfaction, rehabilitation, guarantees of non-repetition, or other forms of redress for the harm they suffered from the siege and/or the attack on the aid convoy?
  - How can reparations address the immediate needs of the victims as well as their long-term recovery?
  - Are there any barriers or obstacles preventing victims from accessing the necessary medical and rehabilitation services?
  - If compensation is preferred, what would be a sufficient amount of monetary compensation? What monetary compensation would be a credible remedy for the victims of the siege such as those who lost their jobs or lacked access to food or basic goods?

WHAT, IF ANY, AVENUES ARE AVAILABLE FOR VICTIMS SEEKING REPARATION?

- **Information related to legal frameworks**
  - What national, regional and international laws, regulations, or legal frameworks may apply to the case?
  - Has the country accepted the jurisdiction of any regional human rights court, international criminal court or hybrid tribunal?
  - Has this country ratified the Rome Statue?
  - Has this country ratified the African Charter on Human and Peoples' Rights? Can victims access the African System of Human and Peoples' Rights? Has this country ratified the Protocol to the African Charter on Human and Peoples' rights? Have the victims exhausted available national remedies?
  - Which human rights treaties has this country signed? Do victims have access to individual complaints procedures of any UN treaty body?

- **Information related to reparation avenues**
  - What, if any, reparation or accountability avenues are available at the national, regional and international level? For example, can the victims seek redress through the national court system, such as filing civil lawsuits or pursuing criminal charges?
  - Are there any compensation programs or funds available in the relevant jurisdiction?
  - Are there any complementary avenues where victims can seek support?
  - What are the advantages, limitations, and potential outcomes of the available redress avenue (if any)?
  - What avenues would victims like to pursue? Can the victims access these mechanisms?

CASE STUDY 3:

An indigenous community in country X of Latin America has been dispossessed and forcibly displaced from their ancestral lands for decades. The community, who used to rely on the land for activities like hunting or fishing, has been deprived of their traditional means of subsistence. They have been compelled to live in conditions of extreme poverty in their new location with limited access to clean water.

The forcible displacement and lack of access to livelihoods and food sources has had detrimental consequences for their nutrition and health. The situation has led to numerous deaths and the prevalence of diseases within the community.

Examples of information that could be collected while investigating Case Study 3

- **Testimonial information:**
  - A witness statement (signed) or a summary. For example, a statement from a leader of the community describing the significance of the land for the community.
  - An audio recording of a witness or survivor account. For example, from a doctor who treated the victims.

- **Documentary information:**
  - Medical records and reports documenting the health issues sustained by members of the community.
  - Death certificates.
  - Expert reports on the water conditions where the community is currently located.
  - Anthropological studies conducted in the region providing insights into the community's cultural practices, reliance on the land for sustenance, ant the consequences of their displacement.
  - Official health records or studies indicating an increase in mortality rates or the prevalence of diseases within the community following their displacement.
  - Any historical records that establish the community's traditional ownership or use rights to the ancestral lands.
  - Records of land disputes between the indigenous community and other actors, such as government or corporations.

- **Secondary information:**
  - Reports from NGOs or other humanitarian aid organizations active in the area.
  - IPC reporting on food security.

Examples of key questions to guide information gathering while investigating Case Study 3

WAS AN INTERNATIONALLY WRONGFUL ACT COMMITTED?

- **Information about the displacement and its consequences**
  - What is the location and coordinates of the ancestral land? What is the location and coordinates of the new area?
  - Time, date, details of displacement: Did the people move in transport or by foot, what was the duration of the journey and what were the conditions along the way? Were any provisions given by the government?

- Were any explanations given, policies issued, or physical actions by the Government to displace the community?
- How was the displacement to the new location impacted the community? How long have they resided there? What were their living conditions?
- How long have the community been dispossessed / living in the new area?
- Can they still reach their previous home or cultivate there, what is the distance between their new location and their home?
- How did the lack of access to traditional means of subsistence affect the community's well-being and food security?
- What were the specific challenges faced by the community in terms of accessing adequate water? Did the authorities address this issue in any way?
- Did someone or any entity purchased the land where the community used to live? Who? From whom?
- What information and evidence exist about the deaths and diseases that occurred?
- What evidence is available regarding the number of civilian casualties resulting from the displacement?
- How did the lack of access to clean water contribute to the deaths and diseases in the community?
- How did the lack of access to their traditional means of subsistence contribute to the deaths and diseases in the community?
- Where there any efforts made by the State to provide the community with alternative means of subsistence during this time?

- **Information about the community's claim to land**
  - What evidence exists regarding the presence of the indigenous community on the land? Are there historical documents, oral traditions, or other sources that establish the continuous occupation and use of the land?
  - How has the indigenous community traditionally used and managed the land? Are there specific cultural or economic activities tied to the land that have been practiced by the community over generations?
  - Are there maps or other documentation that can help define the extent and limits of the claimed territory?

WHO IS RESPONSIBLE FOR THE INTERNATIONALLY WRONGFUL ACT?

- **Information about before the dispossession and forced displacement**
  - Have there been other attempts to dispossess the community of their traditional land? By whom?
  - Are there reports of violence or intimidation committed against the indigenous community before their displacement? By whom?
  - Did the displaced people receive any advance warning, consultation or compensation prior to losing access to their lands? By whom?

- **Information about the dispossession and forced displacement**
  - Who controlled the area where the community used to reside at the time of the dispossession?
  - Where any forcible actions taken to displace the community from their lands? By whom (e.g., governmental forces, private entity, individuals)?
  - What methods were used to forcibly displace the indigenous community from their lands? (e.g., through the use of force, threats, coercion, or legal/administrative means)? By whom?
  - Is there information about the parties responsible for the crimes committed against the community? Were there any specific individuals, groups or companies involved? Who?

- Did someone or any entity purchased the land where the community used to live? Who? From whom?

- **Information about after the dispossession and forced displacement**
  - Who controls now the area where the community used to reside?
  - Has the government of country X acknowledged the displacement of the indigenous community and its impacts? If so, what has their response been?
  - Were there any efforts made by the State to provide the community with alternative means of subsistence during this time?
  - Were there any legal or administrative processes followed in carrying out the displacement, and if so, what were they?
  - Are there any institutions, corporations, or other actors that have been connected to or benefited from the displacement of the indigenous lands and resources?
  - Have there been any efforts, investigations or legal actions to hold perpetrators accountable?
  - Did any humanitarian organization make any public statements or reports about the dispossession and forced displacement?
  - What attempts, if any, have been made to grant the displaced community with reparations (e.g., compensation, or return to their ancestral lands)? By whom?

WHO ARE THE VICTIMS?

- **Information about those harmed**
  - What is the community size and demographic, number of women, children, men, elderly, disabled impacted by the displacement?
  - How many of these civilians lived in the community before the displacement? Who are they? Are there any official records that identify the individuals or groups living in the community?
  - How many civilians relied on traditional means of subsistence in their ancestral lands?
  - How did extreme poverty affect the quality of vulnerable groups such as children, elderly individuals, or those with pre-existing health conditions?
  - Are there any vulnerable groups or individuals that have been disproportionally impacted by the displacement?
  - Are there any support or advocacy groups representing the interests of the victims?

WHAT IS THE NATURE AND EXTENT OF THE HARM SUFFERED?

- **Information about the impact on victims**
  - How were the community living conditions before their displacement?
  - What immediate impact did the displacement have on the indigenous community? How has the displacement impacted their ability to access food and essential goods?
  - How many civilians have died or suffered any medical condition as a result of the conditions of extreme poverty in the new location? What happened to each of them? How were their relatives affected?
  - Are there any estimates of the economic losses incurred as a result of the displacement? E.g., destruction of homes, and ability engage in their traditional economic activities.
  - What is the current status of the community's land rights and living conditions?
  - Are there any long-term physical or psychological consequences experienced by the community members due to their displacement and deprivation of basic necessities?
  - Can you provide more information about the health issues or diseases that were prevalent within the community as a consequence of the living conditions?

WHAT ARE THE VICTIMS' NEEDS AND PREFERENCES?

- **Information related to justice, broadly**
  - What does justice mean to the individuals affected? And to the community in general?

- **Information related to types of reparation**
  - What are the individual and collective needs and reparation preferences of the community affected?
  - How do individuals and the community envision the role of reparations in restoring their well-being?
  - Is land restitution a viable option?
  - Are there any cultural practices that should be taken into consideration when claiming/ determining the type of reparations that would be most meaningful and appropriate for the community?
  - What are the future needs of the community considering the significant economic challenges? What type of reparations would best address the long-term needs of the community?

WHAT, IF ANY, AVENUES ARE AVAILABLE FOR VICTIMS SEEKING REPARATION?

- **Information related to legal frameworks**
  - What national, regional and international laws, regulations, or legal frameworks may apply to the case?
  - Has the country accepted the jurisdiction of any regional human rights court, international criminal court or hybrid tribunal? Has this country ratified the Rome Statue?
  - Which human rights treaties has this country signed? Do victims have access to individual complaints procedures of any UN treaty body?
  - Which human rights treaties has this country signed? Do victims have access to individual complaints procedures under any UN treaty body?
  - Has this State signed the ICESCR? Can victims access the CESCR?
  - Has this State accepted the jurisdiction of the Inter-American Court of Human Rights?
  - Have the victims' exhausted national remedies?

- **Information related to reparation avenues**
  - What, if any, reparation or accountability avenues are available at the national, regional and international level? For example, can the victims seek redress through the national court system, such as filing civil lawsuits or pursuing criminal charges, or are there any reparations programs or funds available?
  - Are there any complementary avenues where victims can seek support?
  - Has the Inter-American Court of Human Rights ordered reparation measures in similar cases? Does this State have a good record of implementing the Court's reparation orders?
  - Have victims considered submitting information to the Special Rapporteur on the rights of Indigenous Peoples, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence or to the Special Rapporteur on the human rights of internally displaced persons?
  - What are the advantages, limitations, and potential outcomes of the available redress avenue (if any)?
  - What avenues would victims like to pursue? Can the victims access these mechanisms?
  - Which are the governmental and non-governmental institutions working on reparations in this country?

ANNEXES

ANNEX I – Template guide for collecting key information from victims for reparation purposes[422]

This template offers a sample of a structured interview guide for interviews with victims and/or witnesses for reparation purposes, including for reparations application and registration forms. This templated approach could be adopted by civil society organizations or other practitioners conducting preliminary interviews to support reparation efforts. Similarly, this document could inform the design of reparations application and registration forms, as it gathers relevant information likely to be required by different reparation mechanisms. This template is not intended to be used as a one-size-fits-all approach. As noted in the Reparations Guide, practitioners should adapt these questions and adopt a methodology that fits the context in which they are working. In particular, if practitioners are collecting information to support reparations applications or registrations forms for a particular reparations mechanism, practitioners should carefully consult the requirements of that mechanism and adapt accordingly.

SECTION I: BIOGRAPHIC INFORMATION

- First and middle names
- Last name
- Other names used
- Father's name
- Mother's name
- Date of birth
- Place of birth
- Gender
- Nationality
- Occupation or source of livelihood, if any
- Passport/identity card number/social security number (if available)
- Marital status
- If relevant: Ethnic background, religious affiliation, social group

SECTION II: CONTACT INFORMATION

- Address
- Phone numbers
- Email addresses
- Name and contact details of other family members and/or potential beneficiaries, including their relationship to the interviewee and others mentions

SECTION II: BASIC FACTS OF THE COMPLAINT AND NATURE OF THE ALLEGED VIOLATION(S)

- Description of the alleged violation(s): *Include summary, in chronological order, of facts and circumstances of the alleged violations described by the victim/interviewee.*
- Any details of the alleged perpetrators of the alleged violation(s)
- Names of potential victims connected to same incidents

[422] The design of this general template has been informed by the research conducted by The International Center for Transitional Justice (ICTJ) in their publication: Forms of Justice A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations, ICTJ (2017).

- Date(s) of the violation(s)
- Time(s) of the violation(s)
- Place(s) of the violation(s)

See also: Part 6 Case studies and Annex II Template guide for reparations-oriented research when documenting the war crime of starvation.[423]

SECTION III: HARM ENDURED

- Description of the **nature** and **extent** of any **physical injury** endured by the victim, including immediate and long-term injuries and diseases.
- Description of the **nature** and **extent** of any **material harm** endured by the victim, including loss of earnings, expenses (for example: transport, legal, medical, physcological, funeral expenses) and lost opportunities, including employment, education and social benefits.
- Description of the **nature** and **extent** of any **moral or non-material harm endured by the victim,** including, for example, trauma, depression, and mental illnesses.
- Description of any particular areas of vulnerability or disability faced by the victim that impact the **nature** or **extent** of harm endured:

In collecting information on the harm endured, practitioners should assess the victim's level of need and whether these needs are the consequence of the violation. The different categories could be adapted to the harms experienced in a particular context.

See also: *Annex II: Template guide for reparations-oriented research when documenting the war crime of starvation. It provides practitioners a set of supporting questions to help determine the harm suffered by direct and indirect victims.*

SECTION IV: TYPE(S) OF REMEDY PREFERRED OR SOUGHT BY THE VICTIM

- Description of any efforts or claims that have been submitted for reparations, amends, or other forms of accountability claim. Include information on steps taken by or on behalf of the victims to obtain redress for the alleged violation. Detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims have been made, when and with which outcomes.
- Description of victims' preferences for reparations, including any preferences for particular forms of reparations, including restitution, financial compensation, rehabilitation, apologies or other forms of satisfaction, guarantees of non-recurrence, or others.

See also: *Annex II provides practitioners a set of supporting questions that may assist practitioners in cases where the State or other group has claimed to establish any reparation mechanism. Annex III Template questionnaire to assess victims' reparations preferences and understanding of justice provides practitioners a set of suggested questions to help collecting information on victims' understanding of justice and their needs and preferences for reparations.*

SECTION V: SUPPORTING DOCUMENTATION

- Enclose copies of documentation or other corroborating evidence that substantiates the description in preceding sections.

[423] Practitioners should follow good practices and limit the questioning to the minimum necessary to accomplish documentation for reparation purposes. In the context of broader accountability efforts, civil society organisations should seek to avoid taking detailed accounts from individuals about their knowledge of crimes but rather facilitate information for future interview by the competent investigative authorities. Even taking general accounts carries risks to the integrity of the person's account, particularly if inappropriate questioning techniques are used. See Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations.

Annex II- Template Guide for Reparations-Oriented Research When Documenting the War Crime of Starvation

This template offers suggested questions as examples to guide practitioners seeking to establish the commission of the **war crime of starvation** and to seek or advocate for reparations for victims of this crime. Please adapt the questions to the context and violations committed and the relevant accountability or reparation mechanisms being addressed. The questions below serve as useful guides for practitioners in evaluating the information that they have collected, information that they might still need to collect, and developing a research plan, including list of potential interviewees and interview questions. As noted in the Reparations Guide, practitioners should adapt these questions and adopt a methodology that fits the context in which they are working.

WRONGFUL ACTI	
Objective Elements	
1	What type of objects were attacked, destroyed, removed or rendered useless by the perpetrator?
2	Were the targeted objects used or relied upon by civilians or military or both?
3	Were civilians affected by such conduct? If so, what were the effects?
4	Could the objects targeted by the perpetrator be considered as indispensable for the survival of civilians in the prevailing circumstances?
5	Did the perpetrator target these objects in their national territory as a tactic against invaders?
6	Did the perpetrator fail to take measures to ensure that civilians are supplied with OIS?
7	Did the perpetrator divert or impede humanitarian aid, for instance, by imposing arbitrary or excessive taxes, charges or technical arrangements?
8	Has the perpetrator closed or shelled an airport or a seaport that was being used or was going to be used to deliver humanitarian aid or other OIS?
Mental elements	
9	Did the perpetrator mean to deprive civilians of OIS? If so, what are the indications of this?
10	Did the perpetrator deprive civilians of OIS willingly, voluntarily and consciously? Or did the perpetrator act under duress, involuntary intoxication or a mental disease or defect?
11	Did the perpetrator know that their conduct would almost certainly lead to this in the ordinary course of events? If so, what are the indications of this?
12	Was it foreseeable to an average person that the conduct of the perpetrator would deprive civilians of OIS?
13	Did the perpetrator deprive civilians of OIS as a method of warfare, i.e. in the course of active hostilities with the enemy?
14	Is there any evidence indicating that the perpetrator used deprivation of OIS as a bargaining tool to obtain a military advantage or pressure an opponent to surrender?
15	Is there any evidence that the perpetrator had the primary intention to starve civilians?
16	Is there evidence of repeated attacks on OIS which were located at a significant distance from any legitimate military targets?
17	Is there any evidence which indicates that the perpetrator knew their conduct would almost certainly cause the starvation of civilians by depriving them of OIS in the ordinary course of events?

WHO IS RESPONSIBLE The following questions aim to gather information that can help distinguish the responsible party for the violation, whether it is a State, non-state actors or individuals.	
1	Where did the violation happen?
2	Who controls the area?
3	Have there been any claims of responsibility or admissions made by individuals or groups regarding the wrongful act?
4	Who is believed to be responsible for the commission of the wrongful act? How do people know this? Are there any specific details or evidence supporting this claim?
5	Where there any other individuals present during the incident who may have additional information?
6	Are there any patterns or previous incidents involving the same responsible party?
7	In case of information is collected regarding individual perpetrators: o How many were they? o Where did they come from? o Which languages did they speak? o Have any of the individuals been recognized? By whom? What do they know about them? o What did they wear? Did they bear any signs, insignia or special uniform suggesting that belong to any particular warring party? o Did they use any particular vehicles? What did the vehicles look like? o Are there any identifiable leaders or key figures among the perpetrators? o Aim at gathering information about their physical appearance, including their age, build, hair, clothing, and distinguishing features.
8	Was the OIS site used by the armed forces? If so, by which armed forces?
9	In case of attacks, is it known what type of ammunition was used in the attack? If so, what type? Did the site of the attack continue to pose a threat to civilians as a result of the type of ammunition used? Is it possible to take photographical evidence of the ammunition remnants?

VICTIMS AND BENEFICIARIES The following questions are intended to support practitioners to gather information about the individuals and communities affected by the violations and who could benefit from reparations.	
1	Who were the individuals directly affected by the incident?
2	Have they or their family members experienced any material, physical or mental harm as a result of the incident?
3	Is there any information about individuals who died or were injured in your community as a result of the incident?
4	Is there any information about individuals who suffered physical or psychological harm as a result of the incident?
5	Is there any information about individuals who suffered material harm as a result of the incident?
6	Have there been instances where individuals or groups in the community were denied access to food or water as a result of the incident?
7	Are there any identifiable groups or communities that have been disproportionately affected by the incident?

8	Was there any spread sickness in the community such as cholera as a result of the commission of a wrongful act? How many people suffered? Are there any available medical reports?
9	Has anyone been harmed while attempting to prevent the commission of the wrongful act? Who?
10	Has anyone been harmed while attempting to help or intervene on behalf of the victims? For example, doctors, paramedics, Humanitarian workers or lawyers.
11	Is it possible to identify individuals or groups within the community who were particularly vulnerable to food shortages or restricted access to water?
12	Has anyone in the community suffered any cultural harm, such as stigma, as a result of the incident? Who?
13	Has anyone in the community suffered economic hardship such as loss of job or income as a result of the incident? Who?

HARM The following questions are intended to help ensure information is collected on the nature and extent of various types of harms that victims may have suffered as a result of wrongful act.	
1	How did this incident harm the victims of the act? How many people were negatively impacted? What were their names, ages, genders and occupations?
2	What were the immediate consequences, if any, of the incident on victims, their families, and their communities?
3	What were the long-term or ongoing effects, If any, of the violation?
4	Have victims, their family or the community had to make any significant lifestyle adjustments due to the harm suffered?
Physical	
5	What is the nature and extent of the victims' physical injuries or health consequences resulting from the incident?
6	How have these injuries affected victims' daily life and overall well-being?
7	Have victims required any medical treatment or ongoing care for your injuries?
8	Have victims experienced any long-term or ongoing effects as a consequence of these injuries?
9	Were there any fatalities or deaths associated with the incident?
10	Is there information available regarding those who may have lost their lives as a direct consequence of the incident?
11	Have there been any reports or documented cases of individuals losing their lives due to the incident?
12	**For family members of the deceased person:** - How has the death impacted the family economically? - Did their salary help support the family? How much did they make? - How has the death affected the overall well-being and mental health of family members? - Have there been any changes in the roles and responsibilities within the family as a result of the death?

Material	
13	Were there any economic or financial consequences as a result of the incident? How has the incident impacted victims livelihood or economic stability?
14	Did the incident impact victims ability to access basic necessities such as food, shelter, or healthcare? What challenges have they faced?
15	Have there been any property damages or losses directly related to the incident? What has been the extent of the damage or loss? - What specific properties were affected by the violation? - What parts of it were damaged or destroyed? - What impact has this had on the family? - How was the property used? Was it used to generate income? Source of food, water, power? - What was the property's value? What is the extent of the damage or loss in terms of monetary value? Are there any photos of the property or documents indicating its value? - Were any repairs necessary to address the damages? If yes, how much did they cost?
16	If possible, provide an estimate of the monetary value of the material harm experienced by the victims as a result of the incident(s).
17	Did the violation(s) have any impact on victims' ability to pursue education or employment opportunities?
18	Have jobs or sources of income been lost during the time of the conflict? Whose? Why? How much did they used to earn?
19	Were expenses paid that were associated with the harm suffered? (For example: legal expenses, medical services, psychological and social assistance, transport, and funeral services.) Provide details and supporting documents such as receipts if available.
20	Did anyone in the household lose opportunities due to the harm suffered? (For example; employment, education, and social benefits).
Psychological, moral or non-material	
21	Have victims suffered from trauma, depression, or mental illness as a consequence of the violation? Describe.
22	Have victims suffered any specific psychological impact due to the loss of a family member or a loved one?
23	Did victims receive any medical attention, treatment, medicine or support for this impact?
24	How has the violation affected victims' sense of security and trust in others?
25	Have victims suffered social harm or loss of status? (this can include difficulties socializing within families and communities, stigma, damaged reputation, divorce or loss of marriage opportunities) If so, who? Were they able to overcome it? If yes, what did they do? If not, what are the consequences?
26	Is there anything else victims would like to share about the specific harm they have endured or its impact on various aspects of their lifes?

REPARATION AVENUES	
The following are questions that may assist practitioners to **map redress mechanisms**:	
1	What is the country's international legal framework and obligations under relevant treaties and conventions? Has the country ratified the Rome Statute of the ICC or relevant humanitarian law and human rights treaties, like the ICESCR?
2	Has the country accepted the jurisdiction of any regional human rights court or international criminal court or hybrid tribunals? Can a case be brought before one of these?

3	Can the victims seek redress through the national court system, such as filing civil lawsuits or pursuing criminal charges?
4	Are there any national, regional or international reparations program available for the victims to seek redress for violations of ICL, IHL or IHRL?
5	Are there any compensation programs or funds available where victims can seek compensation or other forms of amends?
6	Are there any relevant international human rights bodies that provide victims access, including to submit complaints or put forward reports? Are there any regional or international human rights monitoring bodies that the country has agreed to and how can victims engage with these mechanisms?
7	Could victims receive other forms of support? For example, are there any international development organizations or donor agencies providing assistance? Is any party to the conflict providing condolence payments or other forms of amends?
The following questions may assist practitioners in cases where the **State or other group** has claimed to establish a reparation mechanism:	
1	Have victims been able to seek reparations for the harm suffered? If not, why not? Provide details.
2	What specific reparations mechanisms, if any, has the State or NSAG established or claimed to have established? What are its objectives and goals? Can this mechanism receive complaints from victims?
3	When was this mechanism established? Are there any documents indicating this?
4	What is the structure of the mechanism? Who sits on it, what power do they have, who do they report to, who makes the ultimate decisions, what types of complaints do they hear, what can they offer, recommend or order? Are there any documents indicating this?
5	After interacting with the mechanism, is it possible for credible redress to be provided through these structures? If not, why not?
6	Has anyone contacted the victims regarding possible redress following the incident? If yes, who? When? What did they say? How many times did they contact them? Has this mechanism offered the victims any form of reparation? What exactly did they offer? How do victims feel about it? Gather documentation victims might have.
7	When did the victims first hear of this mechanism? From whom? how did they hear about it?
8	When did the victims first interact with the mechanism? Who did they contact, what did they say?
9	What was the process for submitting a formal complaint or submission? Are there any copies available? Were there any forms or written instructions provided by the mechanism?
10	Did the mechanism follow-up or respond in any way following application? If it responded, was it in writing, over the phone, in a hearing? If anything was in writing, can it be provided?
11	What actions did the mechanism take? Did they ignore the submission, request more information, or address the issue?
12	If compensation or other form of reparation was provided, did the individual need to do anything to receive it? (For example, sign documents)
13	Are there any copies of documents exchanged in the process?
14	If the mechanism responded negatively, was there a process to appeal?
15	Were there any threats, reprisals or negative effects on victims who reached out to the mechanism?

Annex III Template questionnaire to assess victims' reparations preferences and understanding of justices

As noted in this Reparations Guide, practitioners should adopt a victim-based approach to reparations research, advocacy and litigation. In order to do so, practitioners will need to inform themselves and others about victims' reparations preferences and understandings of justice. This template offers a list of sample, suggested questions that practitioners could use to better understand the needs and preferences of victims regarding reparations and justice. This template is not one-size-fits-all. Practitioners should adapt these questions and adopt a methodology that fits the context in which they are working.

The list of questions below are best suited to an individual interview. However, the specific methodology a practitioner adopts to inform themselves of victims' reparations preferences and understandings of justice will depend on their goals, mandate, and how they intend to use the information collected. For example, a broader survey would help capture a broader and more representative understanding of victims' overall needs and preferences for reparations, and thus could be employed during the initial stages of designing a reparation program or when seeking to inform large-scale advocacy efforts. Individual interviews, on the other hand, allow for deeper explorations of personal experiences, beliefs and preferences, and might be better suited to informing practitioners planning to undertake representation of specific clients or certain types of advocacy, or when broader surveys are not feasible.

Regardless of the question and methods adapted, practitioners are advised to return to the recommendations and guidance above, including the basic investigative standards, and to be aware of cultural sensitivities, the gender and socio-cultural background of respondents, and practical considerations such as time constraints, logistics, and resources available. At all times, practitioners should only proceed after they have received informed consent from respondents.

1	What does justice mean to you?
2	Do you believe that criminal accountability is a form of justice? Why?
3	Do you believe that reparations are a form of justice? Why?
4	How do you envision the ideal response from authorities, institutions, or society in addressing the harm you have endured?
5	How important, if at all, is it for you that those responsible for the violation that caused you harm are held accountable? Why?
6	How important, if at all, is it for you that you be provided some form of reparation for the violation that caused you harm? Why?
7	How important, if at all, is it for you to receive acknowledgment and recognition of the harm you have suffered? What form would you want that acknowledgment to take, and who should provide it?
8	How important, if at all, is it for you to receive restitution to address the harm you have suffered? If you prefer restitution, how do you envision that being realized?

9	How important, if at all, is it for you to receive financial compensation to address the harm you have suffered? If you prefer financial compensation, are there any specific forms in which you feel that compensation would best be able to help alleviate the economic impact of the harms you have suffered? For example, do you have a preference for something like a pension or a one-time payment?
10	How important, if at all, is it for you to receive rehabilitative measures, such as medical support and access to education, to address the harm you have suffered? If you prefer rehabilitation measures, how do you envision your life and well-being being improved through access to medical, psychological, and rehabilitation services? Are there any barriers or obstacles preventing you from accessing the necessary medical, rehabilitation and support services?
11	How important, if at all, is it for you to see wider systemic change to address the harm you have suffered to ensure this violation does not happen again?
12	Do you feel adequately informed about your right to reparations and the available options you have to seek or demand reparations?
13	Have you sought or are you engaged in any ongoing efforts to seek justice for the harms you suffered? If yes, please describe those efforts and any barriers or obstacles you experienced.
14	Are you aware of others engaged in efforts to seek justice for harms they suffered? If yes, please describe those efforts, who is involved, and any barriers or obstacles you are aware of.
15	Have you received any assistance or support to address the harms you suffered from organizations, institutions, or individuals since the violation occurred? If yes, please describe the type of support and its impact on your recovery process. Did these measures fulfill your needs?
16	Are you aware of other victims or their relatives receiving any support or assistance in dealing with the harms suffered as a result of the violation? If yes, please describe the type of support and assistance and to whom it has been provided.
17	What are your hopes and expectations for the future in terms of your recovery and overall well-being?

Annex IV: ICC reparation procedure and cases

International Criminal Court (ICC)

At the ICC, victims of international crimes, including starvation-related international crimes, have the right to participate in proceedings and the right to claim reparations. Under Article 75(2) of the Rome Statute, the ICC can make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.[424] The Court may also make an order that the award for reparations is made through the Trust Fund provided for in Article 79.[425]

Reparations can only be ordered by the ICC at the end of a trial and in relation to crimes for which an accused has been charged and convicted.[426] Thus, the potential number of victims who would benefit from the process is quite narrow,[427] and the resources limited.[428] The ICC has quantified the harm inflicted and rendered reparations in the cases of *Lubanga*, *Katanga*, *Al-Mahdi*, *Ntaganda*, and recently in *Ongwen*.[429] In Lubanga, the ICC identified reparation principles.[430]

ICC reparation orders have generally combined different forms of reparations: restitution, compensation, rehabilitation,[431] and other forms of remedy.[432] The Court has also provided for collective reparations, or for a combination of individual and collective reparations.[433]

Reparation process at the ICC

1. Written application to participate in proceedings and reparation request

The ICC may award reparations upon **victim request** and also of its **own motion**.[434] Pursuant to Rule 85, victims can be both **natural** and **legal persons**.[435]

As confirmed by the Jurisprudence of the Court, to be eligible for reparation victims should meet the following criteria:[436]

a) Their **identity** as a natural person, or its creation or registration as a legal entity, must be established.
b) They must have **suffered or sustained harm**.
c) The crime from which the harm arises must be one for which the **defendant was convicted**.
d) There must be a direct **causal nexus** between the crime for which the person was convicted and the harm.[437]

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[424] The ICC was the first international permanent criminal tribunal with the authority to provide reparations to individuals. Subsequently, the ECCC similarly recognised the right of victims to seek and receive reparations (ECCC 'Internal Rules'.Rule 23quinquies). For more information see D. Odier Contreras- Garduno Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations. Vol 84. Intersentia; (2018), p.175-176.
[425] Rome Statute, Article 75(2).
[426] ICC Rules of Procedure and Evidence, Rules 94-99; Note that the ICC may only exercise its jurisdiction over a situation where certain preconditions to the exercise of its jurisdiction are met. These preconditions are outlined in Article 12 of the Rome Statute.
[427] L. Moffett 'Reparation Options for the War in Ukraine' p. 15.
[428] M. Åberg, The Reparations Regime of the International Criminal Court. Reparations or General Assistance? p.5
[429] Lubanga Reparation Order, Ntaganda Reparation order; Katanga Reparations Order, para. 121; Trial Chamber VIII, Prosecutor v Ahmad Al Faqi Al Mahdi, Reparation Order, 17 August 2017, ICC-01/12-01/15-236, ('Al-Mahdi Reparation Order'); Trial Chamber IX, Prosecutor v. Dominic Ongwen, Reparation Order, 28 February 2024, ICC-01/04-01/06-2904 ('Ongwen Reparation Order').
[430] Lubanga Reparations Order.
[431] Ntaganda Reparation order, paras. 81–88.
[432] ICC Rules of Procedure and Evidence, Rules 94.1.f.
[433] Unlike in the Lubanga case, the ICC has also granted individual reparations in Katanga, Al-Mahdi, Ntaganda, and Ongwen; See also D. Odier Contreras-Garduno Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations. Vol 84. Intersentia; (2018), p.175-176.
[434] Rome Statute, Article 75; ICC Rules of Procedure and Evidence, Rules 94-95.
[435] ICC Rules of Procedure and Evidence, Rule 85 ´For the purposes of the Statute and the Rules of Procedure and Evidence: (a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.´
[436] Ntaganda Reparations order, para. 31; Onwen Reparations Order para 31.
[437] Trial Chamber I, Prosecutor v. Thomas Lubanga Dyilo, Redacted version of 'Decision on 'indirect victims', 8 April 2009, ICC-01/04-01/06-1813 ('Lubanga Decision on Indirect Victims'), para. 45.

The term victim also includes **indirect victims**, including family members of direct victims, anyone who attempted to prevent the commission of one or more of the crimes under consideration, individuals who suffered harm when helping or intervening on behalf of direct victims, and other persons who suffered personal harm as a result of the offences.[438]

Victims can submit a **written application to participate in ICC proceedings and/or may apply for reparations in the case of a conviction at each stage in the proceedings**. The application shall contain the information set forth in Rule 94:[439]

a) The identity and address of the claimant;
b) A description of the injury, loss or harm;
c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;
d) Where restitution of assets, property or other tangible items is sought, a description of them;
e) Claims for compensation;
f) Claims for rehabilitation and other forms of remedy;
g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

The Victims Participation and Reparations Section (VPRS) is an entity established to provide information to victims about their rights regarding participation and reparations at the ICC. To participate in proceedings, the victim, preferably with the assistance of someone trained by the VPRS, should complete a **standard application form**[440] indicating their **intention to seek reparations**, and submit it with all supporting documentation to the VPRS at either the Headquarters or a Field Office.[441] Victims should provide sufficient information to enable the judges to decide whether an applicant is entitled to participate in proceedings and/or to request reparations.[442]

It is highly recommended that individuals consult the following documents and contact the VPRS before submitting an application:

1. Application form for individuals Forms for participation and for reparations can also be requested from the VPRS at: vprs.information@icc-cpi.int
   - How to complete the application form for individuals for participation and/or reparations
   - Application form for Organisations
   - A guide for the participation of victims in the proceedings of the ICC
   - VPRS Contact details and addresses[443]
2. VPRS files the application with the Chamber of Judges.[444]
3. Judges review and decide if the application is successful or rejected.[445]
4. Judgment and Reparation Order

[438] Ongwen Reparations Order, paras. 35-40.
[439] ICC Rules of Procedure and Evidence, Rule 94.
[440] Application forms are prepared pursuant to Regulation 88 of the Regulations of the Court by the Victims Participation and Reparations Section (VPRS).
[441] The Office of Public Counsel for Victims (OPCV) provides support and assistance to victims and to legal representatives of victims, including, where appropriate, legal research and advice; and appearing before a Chamber in respect of specific issues. It assist victims in relation to their applications for participation in proceedings and/or for reparations. Application forms as well as support on how to complete them can be requested from this Section. Address: P.O. Box 19519 2500 CM The Hague The Netherlands Tel: +31 (0)70 515 8515 / +31 (0)70 515 8108 Fax: +31 (0)70 515 8855 Email: OPCV@icc-cpi.int
[442] A guide for the participation of victims in the proceedings of the ICC, p.24.
[443] P.O. Box 19519, 2500 CM The Hague, The Netherlands Fax: +31 (0)70 515 91 00, Tel: +31(0)70 515 95 55, Email: vprsapplications@icc-cpi.int; ICC Field Office in Kampala, Uganda VPRS P.O. Box 72735 - Kampala Tel.: + 256 (0)77 2 706062; ICC Field Office in Kinshasa, Democratic Republic of the Congo VPRS Tel.: + 243 (0)998011426 or +243 (0)998011433; ICC Field Office in Bangui, Central African Republic VPRS Tel.: +236 (0)75 10 93 19; ICC Field Office in Abidjan, Côte d'Ivoire Tel: + 225 (0) 59 67 2634; ICC Field Office in Tbilisi, Georgia Tel.: + 995 (0) 591 227 038; ICC Field Office in Bamako, Mali Tel: + 223 (0) 71 61 60 83.
[444] REDRESS. Making Sense of Reparations at the International Criminal Court Background Paper Lunch Talk, (2018).
[445] A guide for the participation of victims in the proceedings of the ICC p.25.

At the end of a trial, the judges may decide to **order a person convicted by the Court to make reparations** to victims of the crimes for which he or she has been found guilty. The Court may award reparations either on an **individual** or a **collective** basis. Rule 97 of the Rules provides that, 'taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis, or where it deems appropriate on a collective basis, or both'.[446]

A reparation order establishes **criteria for determining the eligibility of victims**, **assessing the harm inflicted**, specifying the **types of reparations** appropriate to the case, and determining the **financial liability of the convicted individual**.[447] Moreover, according to Article 75(1) of the Rome Statute, a Reparation Order can also determine, amend or develop the principles and legal framework applicable to reparations. Depending on the circumstances of each case, the Trial Chamber decides on the best approach to take in reparations proceedings.

It is relevant to note that in reparations proceedings, the ICC requires a 'balance of probabilities' test as the appropriate standard of proof (a less stringent standard that the one of "beyond reasonable doubt" required to establish the elements of a crime during the trial proceedings).[448] Thus, the individual claiming reparations needs to show that it is more probable than not that she or he suffered harm as a consequence of one of the crimes covered by the conviction.

The **type of reparations** is decided by the judges and may include restitution, compensation, and rehabilitation, but also symbolic preventative or transformative measures. Although Article 75 of the Statute lists restitution, compensation and rehabilitation as forms of reparations, this list is not exclusive.[449] So far, individual awards have taken the form of monetary compensation, while collective awards have taken the form of rehabilitative services and symbolic measures.

A set of **general principles on reparations** was first established by the Appeals Chamber in the **Lubanga case**.[450] The Court furthermore held that the 'principles should be general concepts that, while formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to by future Trial Chambers'.[451] Since then, the Chambers have adopted, adjusted and developed the principles on reparations according to the context and circumstances relevant to each specific case.[452]

Finally, it is crucial to understand that the reparation order is directed against a convicted individual **regardless of the person's indigence**.[453] The principle of accountability dictates that the responsibility rests with the convicted individual, regardless of their financial situation, which may change over time. It has been stressed that there is no incompatibility between issuing a reparations order against an individual and implementing it through the Trust Fund for Victims (TFV).

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[446] ICC Rules of Procedure and Evidence, Rule 97.1.
[447] REDRESS. Making Sense of Reparations at the International Criminal Court Background Paper Lunch Talk, (2018); Rome Statute, Articles75.2; ICC Rules of Procedure and Evidence, Rule 98.
[448] Lubanga Amended Reparation Order, paras 22, 65 and ft.37 ('The term "balance of probabilities" is also described as a "preponderance of proof" or "balance of probability". Black's Law Dictionary defines it as: "the greater the weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other". Black's Law Dictionary, Eighth Edition, Gamer (ed.), 2004, page 1220.'); Ntaganda Reparations order; para. 136; Katanga Reparations Order, para. 49; Al-Mahdi Reparations Order, para.44.
[449] A guide for the participation of victims in the proceedings of the ICC; The Rome Statute outlines that reparations include restitution, compensation, and rehabilitation. This list provided in Article 75 is not exhaustive and allows for the consideration of additional forms of reparations. The Court affirmed this understanding in its decision on reparations in the case of The Prosecutor v. Thomas Lubanga Dyilo establishing the guiding principles and procedures for reparations. Trial Chamber, The Prosecutor v. Thomas Lubanga Dyilo, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06, para. 222; Ongwen Reparation Order, para. 82.
[450] Rome Statute, Articles 75.1
[451] Appeals Chamber, The Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals against "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, ICC-01/04-01/06-3129, para. 55; Ongwen Reparation Decision, para. 57.
[452] Ntaganda Reparations order; paras. 30-103; Katanga Reparations Order, paras. 29-30; Al-Mahdi Reparations Order, paras. 26-50.
[453] Judgment on the appeals against "Decision establishing the principles and procedures to be applied to reparations", para 70; Ongwen Reparation Order, para. 92.

Thomas Lubanga	Germain Katanga	Ahmad Al Faqi Al Mahdi	Bosco Ntaganda	Dominic Ongwen
ICC-01/04-01/06	ICC-01/04-01/07	ICC-01/12-01/15	ICC-01/04-02/06	ICC-02/04-01/15
Guilty of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities (child soldiers). Sentenced to 14 years of imprisonment.	Guilty as an accessory to one count of a CAH and four counts of war crimes committed in 2003 during the attack on the village of Bogoro, in Ituri DRC. Sentenced to 12 years of imprisonment.	Guilty as a co-perpetrator of the war crime of intentionally directing attacks against religious and historic buildings in Timbuktu, Mali in 2012. Sentenced to 7 years of imprisonment.	Guilty of 18 counts of war crimes and CAH, committed in Ituri, DRC, in 2002-2003 Sentenced to 30 years of imprisonment.	Guilty of 61 crimes including war crimes and CAH committed in Uganda between 2002 and 2005. Sentenced to 25 years of imprisonment.
Trial Chamber I issued a decision establishing the principles and process to be applied for reparations. Appeals Chamber amended the order for reparations. Harm identified for direct and indirect victims (harm resulting from SGBV excluded) at a total monetary value of USD 10,000,000. Thomas Lubanga Dyilo's liability at **USD 10,000,000.** Found indigent.	Trial Chamber II issued a Reparation Order awarding **individual** and **collective** reparations to the victims. The Chamber assessed the extent of **physical**, **material** (including the destruction of fields and harvests, pillaging of livestock) and **psychological** harm at a total monetary value of USD **3,752,620.** Katanga liability at **USD 1,000.000.** Found indigent.	Trial Chamber VIII issued a Reparations Order awarding **individual and collective reparations** for the community of Timbuktu. Minor amendments by the Appeals Judgment on Reparations The Chamber ordered reparations for three types of harm: **material damage** to the historic and religious buildings attacked, **economic loss**, and **moral harm** (at a monetary value of 2.7 million EUR). Al Mahdi liability at **2.7 million EUR**. Found indigent.	Trial Chamber VI delivered its Order on Reparations. The Chamber considered **physical**, **material** and **psychological** harm, including the loss of life plan, the harm suffered by victims of SGBC, victims of crimes against child soldiers, the harm suffered by children born out of rape, and transgenerational harm. The Chamber set the total reparations award for which Mr Ntaganda is liable at USD 30,000,000. Trial Chamber II delivered Addendum to the Reparations Order and set the amount of Mr Ntaganda's liability for reparations at **USD 31,300,000.** Found indigent.	Trial Chamber IX issued a Reparations Order The Chamber considered **physical**, **material** (including the loss of housing, goods, food supplies, livestock, and loss of life plan) and **moral** harm, including transgenerational harm. It also recognized the physical and moral harm suffered by direct and indirect SGBV victims, and the physical, moral, and material harm suffered by children born out of SGBV. The Chamber set the financial liability of Mr Ongwen to **52,429,000 EUR** Found indigent.

Thomas Lubanga	Germain Katanga	Ahmad Al Faqi Al Mahdi	Bosco Ntaganda	Dominic Ongwen
Forms of Reparations: **Collective reparations through the provision of services** including mental and physical health care, schools, and language courses. **Symbolic collective reparations** including construction of community centres and mobile programs)	**Forms of Reparations:** **Symbolic compensation** of USD 250 per identified victim (297) **Collective Reparations** for the identifiable group of victims in the form of support for housing, support for income-generating activities, education aid and psychological support. (USD 925,750)	**Forms of Reparations:** **Individual reparations** for those with close connection with the destroyed mausoleums. **Collective reparations** awards including: protection and maintenance of protected buildings, rehabilitation)	**Forms of Reparations:** **Collective reparations with individualised components.** The TFV was instructed to design a draft implementation plan on the basis of all the modalities of reparations identified in the Order, in consultation with the victims.	**Forms of Reparations:** **Collective community-based reparations focused on rehabilitation** and **symbolic/satisfaction measures** consisting of collective rehabilitation programmes, as well as a **symbolic award of €750 EUR** for all eligible victims, and other community symbolic measures
Current Reparation Activities Through TFV implementing partners. In April 2024 the Katanga reparations program was completed.	**Current Reparation Activities** Through the TFV. Individual awards have been disbursed.	**Current Reparation Activities** The TFV is currently complementing the individual and collective reparations such as rehabilitation and maintenance of the protected buildings and the return of internally displaced persons to Timbuktu.	**Current Reparation Activities** Through the TFV No information available as of the date of publication of this Guide.	**Current Reparation Activities** The Chamber instructed the TFV to prepare a DIP with the details of the rehabilitation and symbolic measures to be included. The TFV has issued an urgent funding appeal of EUR 5 million to launch a reparation programme and has launched EOIs to select implementing partner organizations in Uganda.

The Trust Fund for Victims (TFV)[454]

The Trust Fund for Victims was created in 2004 in accordance with Article 79 of the Rome Statute, 'for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims'.[455] This independent institution was created by the Assembly of States Parties to enhance the ICC's reparative justice efforts.[456]

The Fund has a dual mandate:

a) **The Reparation mandate:** The TFV implements Court reparation orders directed against a convicted person[457] with the funds collected from the convicted person and deposited with the Trust Fund or with the voluntary contributions of States Parties or other donors.[458]

   If the convicted individual lacks the financial means and is declared indigent, the TFV may use other resources such as funds made available by voluntary contributions to "complement" the award under Regulation 56 of the Regulations of the Trust Fund.[459]

   The TFV is currently implementing reparation awards in the following cases: Lubanga, Katanga, Al Mahdi cases. The implementation of the reparations for the Ntaganda and Ongwen cases is pending.

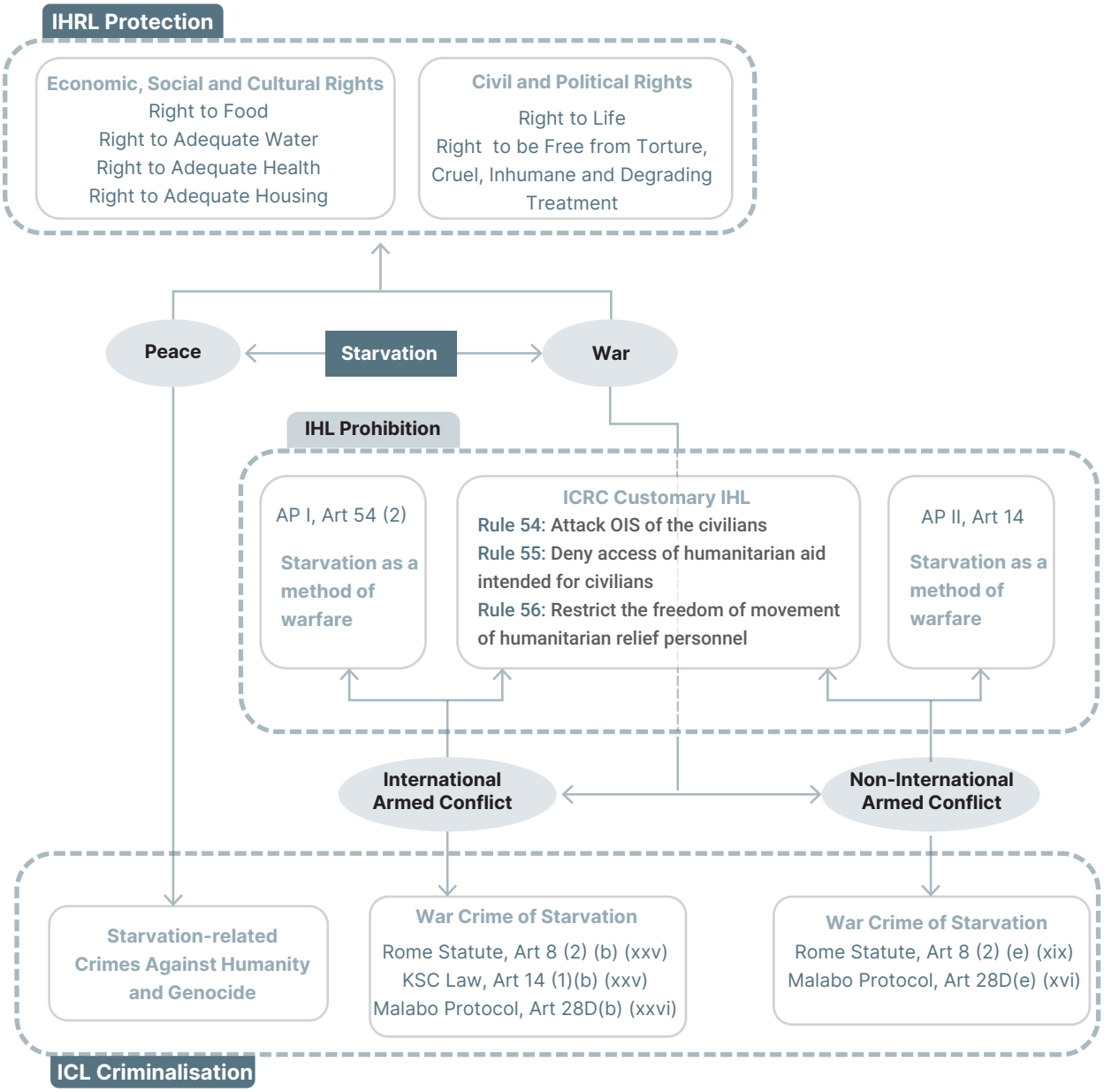
b) **General assistance mandate:** The TFV is also entrusted with the responsibility of providing physical, psychological, and material support to victims and their families.[460] This assistance is not linked to an ICC conviction and relies upon resources the Trust Fund has raised through voluntary contributions.[461] Assistance activities have the potential to reach a wider range of victims as they are not limited to harm stemming from the crimes charged in a particular case.

   - Trust Fund Assistance programmes

[454] Website Trust Fund for Victims.
[455] Rome Statute, Article 79.1 'A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.'; ICC Rules of Procedure and Evidence, Rule 98.
[456] D. Odier Contreras-Garduno *Collective Reparations: Tensions and Dilemmas between Collective Reparations with the Individual Right to Receive Reparations.* Vol 84. Intersentia; (2018), p. 179.
[457] Rome Statute, Article 75.2; ICC Rules of Procedure and Evidence, Rule 98 (1-5).
[458] Website Trust Fund for Victims; Rome Statute, Article 79; ICC Rules of Procedure and Evidence, Rules 98 and 217, 218(3).
[459] Regulations of the Trust Fund for Victims, Resolution ICC-ASP/4/Res.3, para. 47 ('For the purpose of these regulations, "other resources of the Trust Fund" set out in of rule 98, paragraph 5, of the Rules of Procedure and Evidence refers to resources other than those collected from awards for reparations, fines and forfeitures´, para.48 ´Other resources of the Trust Fund shall be used to benefit victims of crimes as defined in rule 85 of the Rules of Procedure and Evidence, and, where natural persons are concerned, their families, who have suffered physical, psychological and/or material harm as a result of these crimes.').
[460] Regulations of the Trust Fund for Victims, para. 48.
[461] Regulations of the Trust Fund for Victims, paras. 47-48.

Annex V: Starvation within International Legal Frameworks[462]

This Annex looks at the prohibition of starvation as a method of warfare under IHL, including ICL, and the associated rights under International Human Rights Law (IHRL), including Economic, Social and Cultural Rights (ESCR). It aims to provide Practitioners with an overview of the legal framework underlying claims for reparations for starvation and starvation-related violations to ensure effective advocacy and documentation efforts. The diagram demonstrates how the three bodies of law intersect.


IHRL Protection
Economic, Social and Cultural Rights
Right to Food
Right to Adequate Water
Right to Adequate Health
Right to Adequate Housing
Civil and Political Rights
Right to Life
Right to be Free from Torture, Cruel, Inhumane and Degrading Treatment
Peace
Starvation
War
IHL Prohibition
AP I, Art 54 (2)
Starvation as a method of warfare
ICRC Customary IHL
Rule 54: Attack OIS of the civilians
Rule 55: Deny access of humanitarian aid intended for civilians
Rule 56: Restrict the freedom of movement of humanitarian relief personnel
AP II, Art 14
Starvation as a method of warfare
International Armed Conflict
Non-International Armed Conflict
Starvation-related Crimes Against Humanity and Genocide
War Crime of Starvation
Rome Statute, Art 8 (2) (b) (xxv)
KSC Law, Art 14 (1)(b) (xxv)
Malabo Protocol, Art 28D(b) (xxvi)
War Crime of Starvation
Rome Statute, Art 8 (2) (e) (xix)
Malabo Protocol, Art 28D(e) (xvi)
ICL Criminalisation

[462] This Annex is a summary of Global Rights Compliance's Starvation Training Manual (available in Arabic, English and Ukrainian) and Mobile App (available in Arabic and English). The Starvation Manual and App are unique tools that enable practitioners to identify, document, monitor, preventively respond to and seek accountability for the deliberate use of starvation and associated humanitarian-related crisis violations. First developed in 2019, with a second issue released 2022 and the Ukrainian special issue published 2023, the Manual contains three parts; (i) the legal framework of starvation under international law; (ii) GRC's Basic Investigative Standards, adapted and expanded for the investigation of starvation crimes; and (iii) remedies and standard operation procedures for engaging with accountability mechanisms, UN mandate holders and sanctions regimes and case selection and prioritisation.

Starvation under the ICL Framework

The act of deliberate starvation as a method of warfare (hereafter 'starvation') was first formally penalised by an international judicial body in 1998, with the adoption of the Rome Statute of the International Criminal Court (ICC). Article 8(2)(b)(xxv)[463] of the Statute recognised starvation as a war crime when perpetrated in the context of an international armed conflict. In 2014, the statute of the African Court of Justice and Human Rights, also known as the Malabo Protocol, recognised starvation as a war crime in both international and non-international conflicts.[464]

Starvation-Related Crimes

WAR CRIMES

(1) Starvation as a Method of Warfare (IAC)

Article 8(2)(b)(xxv) of the Rome Statute prohibits starving civilians as a method of warfare by depriving them of objects indispensable to their survival (OIS) in the course of an international armed conflict (IAC).[465]

> "Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions"[466]

This may be done, for example, by depriving civilians of food or of other supplies (such as clothing, shelter, medicine etc.) that are necessary for their survival.

Evidence will be required to establish the following elements of this crime:

Objective Element:

1. The perpetrator deprived civilians of OIS;[467]

Mental Elements:

2. The perpetrator committed the objective elements of the crime with intent and knowledge;
3. The perpetrator intended to starve civilians as a method of warfare;[468]

Contextual Elements:

4. The conduct took place in the context of and was associated with an IAC;[469]
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.[470]

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[463] In 2019 the Rome Statute was amended to include the prohibition in a non-international armed conflict, under proposed Article 8(2)(e)(xix). GRC worked closely with Switzerland who tabled the amendment in 2018-19 and subsequently on increasing ratifications. See GRC's Ratification Portal.
[464] Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014), Articles 28D(b)(xxvi) and 28D(e)(xvi).
465 This prohibition is derived from AP I and AP II and forms a part of customary law. AP I, Article 54(1); AP II, Article 14; *Customary IHL: Rules*, Rule 53 (Starvation as a Method of Warfare).
[466] Rome Statute, Article 8(2)(b)(xxv).
[467] Elements of Crimes, Article 8(2)(b)(xxv), Element One.
[468] Elements of Crimes, Article 8(2)(b)(xxv), Element Two.
[469] Elements of Crimes, Article 8(2)(b)(xxv), Element Three.
[470] Elements of Crimes, Article 8(2)(b)(xxv), Element Four.

Objective Element:

1. The perpetrator deprived civilians of OIS

Analysis of the element:

The only objective element of the war crime of starvation is that the perpetrator deprived civilians of 'OIS'.[471] For example, impeding humanitarian relief and aid supplies destined for civilians may qualify as depriving them of OIS.[472] There is no need to prove that civilians did in fact starve or die as a result of the perpetrator's conduct in order to establish this element.[473] Establishing this element can be done by demonstrating that:

a. *The perpetrator deprived certain objects*

First, Practitioners should seek information demonstrating that the perpetrator deprived civilians of certain objects. The conduct of deprivation is not limited to a specific type.[474] It includes acts such as attacking, destroying, removing objects or rendering them useless,[475] as well as omissions such as refusing to take measures to ensure civilians' access to them.[476]

b. Such objects were indispensable to the survival of civilians

Second, Practitioners should seek information that demonstrates that the objects that the perpetrator deprived civilians of were indispensable to their survival. Such objects include objects that are indispensable to survival at all times, i.e. foodstuff and water, as well as any other object that can be considered as 'indispensable' (or necessary) for survival in certain circumstances, which may be conflict (climate and territorial variances) and victim specific (children will have distinct needs from lactating mothers or from those suffering from communicable diseases such as cholera).[477] For instance, if victims are located in freezing weather conditions, clothes or blankets may be considered as OIS.[478]

The following are likely to qualify as OIS at all times:[479]

- Crops, livestock and other agricultural areas for the production of foodstuffs;[480]
- Drinking water installations/supplies and irrigation works;[481]
- Medical supplies;[482] and
- Means of shelter.[483]

c. Deprivation of such objects was aimed at civilians

Third, Practitioners should seek information demonstrating that the deprivation of OIS was aimed at civilians. Civilians are all persons who are not members of the armed forces.[484] They enjoy absolute protection under IHL (unless, and only for such time as, they directly participate in hostilities). Where objects being used by civilians are also being used in direct support of military action (e.g., a military vehicle sometimes used to transport civilians), they may be lawfully attacked *unless* their destruction "is bound to have serious effects on supplies for the civilian population and the latter would thereby

[471] Elements of Crimes, Article 8(2)(b)(xxv), Element One.
[472] Rome Statute, Article 8(2)(b)(xxv). See GC IV, Articles 23, 70, 71; AP I, Article 70. See Triffterer et al. (2016), pp. 514-515.
[473] Lee (2001), pp. 141-142. Triffterer et al. (2016), p. 448; UN, Report of the Preparatory Committee on the Establishment of an International Criminal Court, p. 635, fn. 74.
[474] ICRC Commentary to the APs, para. 2101 regarding AP I, Article 54(2).
[475] See AP I, Article 54; AP II, Article. 14. See also ICRC Commentary to the APs, para. 2795 regarding AP I, Article 70(1).
[476] Triffterer et al. (2016), p. 516.
[477] Dörmann et al. (2003), p. 475.
[478] Dörmann et al. (2003), p. 475.
[479] Dörmann et al. (2003), p. 475.
[480] AP I, Article 54; AP II, Article 14.
[481] AP I, Article 54; AP II, Article 14.
[482] Dörmann et al. (2003), p. 475. See also GC IV, Article 59 which is considered to be part of CIL applicable also in NIACs (ICRC Customary IHL, Rule 55: Access to Humanitarian Relief to Civilians in Need. See also GC IV, Article 23 which includes 'clothing and tonics intended for children under fifteen, expectant mothers and maternity cases'.
[483] AP I, Article 69.
[484] GC III, Article 4; AP I, Article 50. AP II does not contain a definition of civilians or the civilian population even though these terms are used in several provisions, see AP II, Articles 13-15, 17-18; Customary IHL: Rules, Rule 5 (Definition of Civilians).

be reduced to starvation or forced to move away".[485] Finally, a party to a conflict may deprive civilians on their own territory (as opposed to enemy territory) of OIS if required by military necessity, for instance, as defence against invasion.[486] Practitioners should note that if in doubt, a person shall always be considered a civilian.[487]

Mental Elements:

The mental requirements of starvation as a war crime under Article 8(2)(b)(xxv) of the Rome Statute are two-fold:

i. the perpetrator must have intentionally deprived civilians of OIS; and
ii. the perpetrator must have intended to starve civilians as a method of warfare.

2. The perpetrator intentionally deprived the civilians of the OIS;

Analysis of the Element

This element corresponds to the objective element of this crime and requires that the deprivation of civilians of OIS must be committed with knowledge and intent.[488] This means that the perpetrator must have intended, directly or indirectly, to deprive civilians of certain objects and been aware that the objects being deprived of the civilian population were essential to the survival of that population. This can be established through the factual circumstances surrounding the commission of the crime. Specifically, the evidence will need to establish that:

i. The perpetrator desired to commit the act of deprivation (**direct intent**), or was aware that their conduct would deprive the civilians of OIS in the ordinary course of events (**indirect intent**);
ii. The perpetrator knew the objects were indispensable to the survival of the victims;
iii. The perpetrator was aware that the victims were civilians.

3. The perpetrator intended to starve civilians as a method of warfare

Analysis of the Element

The intention to starve is an additional mental element beyond the knowledge and intent in relation to act of deprivation itself.[489]

a. Intention to Starve Does Not Require Proof that Civilians Starved

The occurrence of death, suffering or disease due to starvation is not required to satisfy the element of 'intent to starve civilians'.[490] Intent to starve civilians is established when the perpetrator a) engaged in the deprivation with the purpose of denying sustenance to a population including civilians;[491] b) aimed to inflict conditions of life conducive to the starvation of civilians;[492] or c) engaged in the deprivation action in the awareness that the starvation of civilians would be a foreseeable consequence of that deprivation.[493]

[485] For guidance, see ICRC Commentary to the APs, p. 655 regarding AP I, Article 54(2).
[486] AP I, Article 54(5).
[487] AP I, Article 50(1).
[488] Given that the essential element of depriving civilians of objects indispensable to their survival is conduct (and a consequence) without an express associated mental standard, Article 30 operates to require that that element be committed intentionally.
[489] This manual is of the view that the intention to starve is not a 'special intent' (dolus specialis) on par with, for example, genocide. See fn. 243.
[490] See Jordash et al. (2019). See also Triffterer et al. (2016), p. 517, mn. 790: 'The only material element required by the elements of crimes is that there is a deprivation of certain objects. This suggests that it is [...] sufficient that civilians are deprived of objects indispensable to their survival, that is, a deprivation that would cause them in the future to starve, without requiring that the deprivation takes its effect over time.'
[491] Tom Dannenbaum, *Criminalizing Starvation in an Age of Mass Deprivation in War*, 55 Vand. J. Transnat'l L. 681at 734-739, 740-41.
[492] Bridget Conley, Alex De Waal, Catriona Murdoch, and Wayne Jordash (eds), Accountability for Mass Starvation: Testing the Limits of the Law (OUP 2022), p.115-116.
[493] Bridget Conley, Alex De Waal, Catriona Murdoch, and Wayne Jordash (eds), Accountability for Mass Starvation: Testing the Limits of the Law (OUP 2022), pp.115-116

b. Meaning of 'Method of Warfare'

To fulfil this element, it must be established that the intent to starve civilians was used as a 'method of warfare'. This means the act of starvation through deprivation was a 'specific, tactical or strategic'[494] way of conducting hostilities that are designed to 'overwhelm and weaken the adversary'.[495] IHL operates under the presumption that all hostilities are intended to overwhelm and weaken an adversary. Therefore, this element ultimately requires only that the starvation was linked to the military activities. Nothing further is required.

c. No requirement that a perpetrator must have acted with a sole intent to starve

If the perpetrator was simultaneously seeking other lawful or unlawful goals, they may still be liable for the crime of starvation if it can be demonstrated that they intended to starve civilians as a method of warfare.[496] For example, sieges and blockades designed to deprive the enemy of necessary provisions to carry on fighting are considered to be lawful methods of warfare under IHL so long as they are directed at combatants and those directly participating in hostilities.[497] If the siege or blockade results in the suffering of civilians, IHL demands that the besieging or blockading party allow the safe passage of relief supplies.[498] Accordingly, if the perpetrator maintained a blockade or a siege without allowing any relief supplies to pass through, with the knowledge that civilians were starving as a result, this may be indicative of an intention to starve civilians.

(2) Starvation as a Method of Warfare (NIAC)

Proposed Article 8(2)(e)(xix) of the Rome Statute prohibits starving civilians as a method of warfare by depriving them of OIS in the course of a non-international armed conflict (NIAC). This crime is identical to Article 8(2)(b)(xix) save for the contextual element requiring classification of the conflict as a NIAC rather than as an IAC, and the absence of reference to the Geneva Conventions.[499]

Evidence will be required to establish the following elements of this crime:

Objective Element:

1. The perpetrator deprived civilians of OIS;[500]

See Objective Elements (Element 1) of Starvation as a Method of Warfare (IAC).

Mental Elements:

2. The perpetrator committed the objective elements of the crime with intent and knowledge;[501]
3. The perpetrator intended to starve civilians as a method of warfare;[502]

See Mental Elements (Elements 2 and 3) of Starvation as a Method of Warfare (IAC).

[494] See P.J. Cameron, 'The limitations on Methods and Means of Warfare' (1980) 9 Australian Yearbook of International Law 247, 247, similarly defining methods of warfare as 'all strategies and tactics and every other measure which, by the use of manpower and weapons systems, an armed force may employ'. Cf. Humanitarian Policy and Conflict Research (ed), Commentary on the Humanitarian Policy and Conflict Research Manual on International Law Applicable to Air and Missile Warfare (Harvard University Press 2010), p. 43, defining methods of warfare as 'attacks and other activities designed to adversely affect the enemy's military operations or military capacity', which has been criticised for failing to include attacks against enemy civilians. See, e.g., S. Casey- Maslen and S. Haines, Hague Law Interpreted: The Conduct of Hostilities Under the Law of Armed Conflict (Bloomsbury Publishing 2018), pp. 54-55.
[495] N. Melzer and G. Gaggioli, 'Methods of warfare' in D. Akande and B. Saul (eds), Oxford Guide to International Humanitarian Law (OUP 2019), p. 4, criticising the ICRC's definition of 'methods of warfare' as 'the ways in which weapons are used' (ICRC Commentary to the APs, para. 4799 regarding AP II, Article 14) as too restrictive and overlooking the methods other than 'weapons' in traditional sense, such as starvation.
[496] Niyitegeka, ICTR-96-14-A, Judgment, 9 July 2004, para. 53; Jelisić Appeal Judgment, para. 49.
[497] The term 'methods of warfare' refers to any tactical or strategic ways of conducting hostilities, including aerial and naval blockades and sieges.
[498] San Remo Manual, paras 103-104; ICRC Commentary to the APs, p. 654 regarding AP I, Article 54(2).
[499] The Rome Statute was amended in 2019 to include the crime of starvation in a NIAC.
[500] Elements of Crimes, Proposed Article 8(2)(e), Element One. New subparagraph to be inserted into Article 8.
[501] Rome Statute, Article 30.
[502] Elements of Crimes, Proposed Article 8(2)(e), Element Two.

Contextual Elements:

4. The conduct took place in the context of and was associated with an NIAC;[503]
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.[504]

ADDITIONAL WAR CRIMES

In addition to war crimes of starvation, there are an array of additional or alternative crimes that can capture starvation related violations. A single incident may often implicate more than one crime, especially when the situation is complex or where multiple distinct protected interests are harmed. For example, the attack of a humanitarian relief convoy with the intention to starve civilians as a method of warfare could both constitute the war crime of starvation, as well as the war crime of attacking objects specifically protected by international law.[505] If the civilians are targeted based on their specific characteristics, the attack could also be classified as persecution as a crime against humanity or as genocide. By pronouncing all of the separate crimes implicated in an incident and punishing them accordingly,[506] the singularity of all human rights infringements encapsulated in one incident is recognised.[507] Meanwhile, subject to the evidence available, the incident may fall short of a particular crime but still constitute another. In the same example of attack against the convoy, if the accused cannot be proven to have the intention to starve, alternative options should be assessed to determine if the evidence is sufficient to establish, for example, war crime of attacking protected objects.

Practitioners are advised to collect evidence and document a broad range of potential starvation-related crimes and violations, to ensure any trier of fact is provided with the widest possible selection of prospective bases from which to pursue a reparations claim arising from relevant starvation facts. For more information on the objective and mental elements of the following crimes see GRC's Starvation Mobile App.

(3) Wilful Killing and Murder

Wilful killing[508] and murder as war crimes are prohibited under Article 8(2)(a)(i) of the Rome Statute in an IAC[509] and Article 8(2)(c)(i) of the Rome Statute in an NIAC.[510] In the context of starvation, causing the death of one or more persons through depriving them of OIS may be prosecuted under these war crimes.

(4) Torture

Article 8(2)(a)(ii) and 8(2)(c)(i) of the Rome Statute prohibits the war crime of torture (including biological experiments) in IAC and NIAC respectively.[511] The war crime of torture, whether in an IAC or NIAC, is defined as 'infliction of severe physical or mental pain or suffering upon one or more persons

[503] Elements of Crimes, Proposed Article 8(2)(e), Element
[504] Elements of Crimes, Proposed Article 8(2)(e), Element Four.
[505] Rome Statute, Articles 8(2)(b)(iii) (international armed conflict), 8(2)(e)(iii) (non-international armed conflict).
[506] When the same conduct simultaneously constitutes multiple crimes, the sentence will not be a simple sum for individual offences. Rather, the total would likely be more than, albeit close to, the heaviest sentence amongst all offences. Nevertheless, due attention must be paid to make sure the victims are heard on which label most accurately describes their suffering, even if the sentencing implication is minute. See, e.g., V. Oosterveld, 'The Special Court for Sierra Leone: Initial Structural and Procedural Decisions on Sexual and Gender-Based Violence' (2015-2016) 46 Cambrian Law Review 131
[507] For the scope and the limit on cumulative charging, see War Crime Research Office of American University Washington College of Law, 'The Practice of Cumulative Charging at the International Criminal Court' (May 2010).
[508] The elements of 'wilful killing' are essentially identical to murder.
[509] See GC I, Article 50; GC II, Article 51; GC III, Article 130; GC IV, Article 147; AP I, Article 75(2)(a); Willful killing has also been criminalised under the following instruments: ICTY Statute, Article 2(a); Law on ECCC, Article 6(1); Nuremberg Charter, Article 6(b); Tokyo Charter, Article 5(b).
[510] The war crime of murder in NIACs is prohibited by Common Article 3 to the Geneva Conventions, which prohibits 'violence to life and person, in particular murder of all kinds' of civilians and person *hors de combat,* AP II, Article 4(2)(a). The prohibition of murder also forms part of customary international law: ICRC Customary IHL, Rule 89: Violence to Life.
[511] Rome Statute, Article 8(2)(a)(ii). This prohibition is derived from GC I, Articles 3, 50; GC II, Articles 3, 51; GC III, Articles 3, 130; GC IV, Articles 3, 147; AP I, Article 75, para. 2(a)(ii); AP II, Article 4(2)(a). Torture has also been criminalised under the following instruments: ICTY Statute, Article 2(b); ICTR Statute, Article 4(a); SCSL Statute, Article 3(a); Law on ECCC, Article 6(2); Nuremberg Charter, Article 6(b); Tokyo Charter, Article 5(b). This prohibition also forms a part of customary law. See *Customary IHL: Rules*, Rule 90 (Torture and Cruel, Inhuman or Degrading Treatment).

for a specific purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind'.

(5) Inhuman or Cruel Treatment

Article 8(2)(a)(ii)-2 and 8(2)(c)(ii) of the Rome Statute prohibit the war crime of inhuman treatment in an IAC and cruel treatment in a NIAC respectively.[512]

Unlike torture, these crimes do not require the infliction of pain or suffering to be committed for a specific purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination.[513] The remaining elements of these crimes are identical to those of war crime of torture. Inhuman or cruel treatment are therefore likely to be preferred when an act inflicting severe pain or suffering on a victim does not satisfy the purpose element of the crime of torture.[514] There are examples of the imposition of inhumane detention conditions on detainees involving the deprivation of OIS including, food, water, medicine, or protection from the rigours of the climate have been found to constitute inhuman or cruel treatment in international criminal jurisprudence.[515]

If Practitioners cannot find evidence of the perpetrator's purpose in depriving the civilians of OIS as a form of ill-treatment, they should focus their efforts on establishing the crimes of inhuman treatment (in IAC) or cruel treatment (in NIAC).

(6) Wilfully Causing Great Suffering

Article 8(2)(a)(iii) of the Rome Statute prohibits the war crime of wilfully causing great suffering, or serious injury to body or health, to one or more persons in an IAC.[516] This occurs when a perpetrator causes 'great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons' who are protected under the Geneva Conventions. The degree of harm required by this crime (i.e. great physical or mental pain or suffering, or serious injury to body or health) is lower than one required for torture or inhuman/cruel treatment (i.e. severe physical pain or suffering).[517]

Practitioners should focus on this crime in cases where the physical or mental pain or suffering or injury caused to the victim by the deprivation of OIS (such as food, water or medication)[518] is not severe enough to constitute torture, or inhuman or cruel treatment.

(7) Committing Outrages upon Personal Dignity

Article 8(2)(b)(xxi) and 8(2)(c)(ii) of the Rome Statute prohibit the war crime of outrages upon personal dignity, in particular humiliating and degrading treatment, on one or more persons in an IAC and NIAC respectively.[519] The fundamental purpose of the prohibition is to shield individuals from unlawful attacks to their body or humiliation and debasement of their honour, self-respect,

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[512] Inhuman treatment is also prohibited under the following international legal instruments: ICTY Statute, Article 2(b); ICTR Statute, Article 4(a); SCSL Statute, Article 3(a); Law on ECCC, Article 6(2); GC I, Articles 3, 12; GC II, Articles 3, 12; GC III, Articles 3, 13, 20, 46, GC IV, Articles 3, 27, 32; AP I, Article 75. Cruel treatment is prohibited under GCs I-IV, Article 3. Prohibition on both of these crimes is a part of customary law. *Customary IHL: Rules*, Rule 90 (Torture and Cruel, Inhuman or Degrading Treatment).
[513] Triffterer et al. (2016), p. 552; *Čelibići* Trial Judgment, para. 443.
[514] Werle and Jessberger (2014), p.440; *Čelibići* Trial Judgment, para. 542
[515] *Hadžihasanović & Kubura* Trial Judgment, paras 35-37; *Simić et al.* Trial Judgment, para. 773; *Čelibići* Trial Judgment, paras 1113, 1119; *Limaj et al.* Trial Judgment, paras 288-289, 652; *Prlić et al.* Trial Judgment Volume 3, paras 1176-1177, 1181-1184, 192-1194, 1197-1199, 1201-1202, 1204-1205. See also AP II, Article 5(1)(b).
[516] Wilfully causing great suffering as a war crime is also identified in the following international legal instruments: ICTY Statute, Article 2(c); ICTR Statute, Article 4(a); SCSL Statute, Article 3(a). The ICTR and SCSL Statutes refer to the crime of wilfully causing great suffering as '[v]iolence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment'. See also GC I, Article 12; GC II, Article 12; GC III, Article 13; GC IV, Article 32. This crime is prohibited under customary international humanitarian law as well. See *Customary IHL: Rules*, Rule 90 (Torture and Cruel, Inhuman or Degrading Treatment); Triffterer et al. (2016), p. 338.
[517] *Kvočka et al.* Trial Judgment, para. 161. See *Kvočka et al.* Appeal Judgment, paras 584-585. See also *Čelibići* Trial Judgment, para. 542; Triffterer et al. (2016), p. 338.
[518] *Duch* Trial Judgment, paras 268-269, 273, 457.
[519] Article 3 Common to GC I, GC II, GC III, and GC IV; AP I, Article 75(2)(b); AP II, Article 4(2)(e).

or mental well-being.[520] Differing from other forms of mistreatment (i.e., torture, inhuman/cruel treatment or causing great suffering or serious injury), committing outrages upon personal dignity does not require proof that the perpetrator acted directly to harm the physical or mental well-being of the victim.[521]

(8) Unlawful Deportation and Transfer

Article 8(2)(a)(vii) of the Rome Statute prohibits unlawful deportation, transfer, or unlawful confinement of protected persons to another State or another location in an IAC.[522] The movement of people as a result of the deprivation of OIS, withholding of aid and destruction of food and water sources is a common consequence of some conflicts.

(9) Displacing Civilians

Displacement of civilians for reasons related to a NIAC conflict without any lawful justification (such as the security of civilians involved or imperative military reasons) as prohibited under Article 8(2)(e)(viii) of the Rome Statute,

> "Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;"[523]

Whilst there are some key differences, this crime is comparable to the war crime of unlawful deportation and transfer that occurs in an IAC.

(10) Transfers by the Occupying Power of Persons in Occupied Territory

Article 8(2)(b)(viii) of the Rome Statute prohibits the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory,

> "The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory"[524]

An occupied territory refers to a territory of a State which is under the authority and effective control of another State, namely the occupier state.[525] This crime is almost identical to the war crime of unlawful deportation and transfer except for the fact that it only protects the population of an occupied territory.[526] It is particularly relevant to situations of deprivation of OIS in an occupied territory that subsequently causes displacement.

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[520] *Furundžija* Trial Judgment, para. 183.
[521] *Aleksovski* Trial Judgment, para. 56.
[522] Rome Statute, Article 8(2)(a)(viii). This prohibition is derived from GC IV, Article 147; Unlawful Deportation and Transfer has also been criminalised in the following instruments: ICTY Statute, Article 2(g); Law on ECCC, Article 6(7). This prohibition also forms a part of customary law, *Customary IHL: Rules*, Rule 129 (the Act of Displacement).
[523] Rome Statute, Article 8(2)(e)(viii). This prohibition is derived from AP II, Article 17. This prohibition also forms a part of customary law: *Customary IHL: Rules*, Rule 129 (Act of Displacement).
[524] This prohibition is derived from GC IV, Article 49; AP I, Article 85 (4)(a). It is also part of customary law. *Customary IHL: Rules*, Rule 130 (Transfer of Own Civilian Population into Occupied Territory). An occupied territory refers to a territory of a State which is under the authority and effective control of another State, namely the occupier state, see Hague Regulations, Article 42.
[525] See Hague Regulations, Article 42.
[526] While this provision also prohibits the direct and indirect transfer of its own population into an occupied territory by an occupying power, it is difficult to fathom a situation where the occupation authorities would transfer their own nationals into an occupied territory through starving them. This part of Article 8(2)(b)(viii) is, therefore, excluded from this section.

(11) Destroying or Seizing the Enemy's Property

Article 8(2)(b)(xiii) and Article 8(2)(e)(xii) of the Rome Statute prohibit destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war in an IAC or a NIAC respectively.[527]

(12) Attacking Civilians

Article 8(2)(b)(i) and Article 8(2)(e)(i) of the Rome Statute prohibit the war crime of intentionally directing attacks against civilians in the context of an IAC or NIAC respectively.

> "Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities"

This provision is based on the customary IHL principle of distinction, which requires the warring sides of an armed conflict to distinguish at all times between civilians and combatants and to direct attacks only against combatants.[528] The prohibition on directly targeting civilians is absolute, meaning that it cannot be bypassed due to considerations of military necessity.[529]

Directed attacks that deprive civilians of OIS may fall under this provision. For instance, the imposition of a siege which caused the starvation of civilians has previously been considered as a form of attack directed against civilians.[530]

(13) Attacking Civilian Objects

Article 8(2)(b)(ii) of the Rome Statute prohibits the war crime of intentionally directing attacks against civilian objects (i.e., objects that are not military objectives) in an IAC. Starvation related conduct could be prosecuted under this war crime if, for example, the attacks are directed against food stores, food items, markets, food producing objects, food storages, water wells, hydroelectric systems or agricultural areas.

(14) Excessive Incidental Death, Injury, or Damage

Article 8(2)(b)(iv) of the Rome Statute prohibits in an IAC:

> "Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."

This prohibition relates to situations where the perpetrator did not intentionally target civilians or civilian objects in launching an attack, but nevertheless caused excessive or disproportionate death, injury or damage to them while targeting military objectives. For instance, attacks against enemy combatants causing excessive damage to food items, markets, agricultural areas, food producing systems, water wells or OIS may be categorized under this war crime. Similarly, sieges and blockades directed against enemy combatants which are found in an area but cause excessive damage to civilians by depriving them of OIS may also fall within the scope of this war crime.

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[527] This prohibition of destruction is derived from the Hague Regulations, Article 23(g); GC IV, Article 53; AP I, Article 54. The following international legal instruments prohibit destruction of property: Nuremberg Charter, Article 6(b); Tokyo Charter, Article 5(b); ICTY Statute, Articles 2(d), 3(b); SCSL Statute, Article 5(b); Law on ECCC, Article 6(4). It also forms a part of customary law: *Customary IHL: Rules*, Rule 50 (Destruction and Seizure of Property of an Adversary). This prohibition of seizure is derived from the Hague Regulations, Articles 23(g), 46, 47, 52-53; GC III, Article 18. It is criminalised in Nuremberg Charter, Article 6(b); Tokyo Charter, Article 5(b); Control Council Law No. 10, Article 13(b); ICTY Statute, Articles 2(d), 3(b); SCSL Statute, Article 5(b); Law on ECCC, Article 6(4).
[528] AP I, Article 51; AP II, Article 13(2); *Customary IHL: Rules*, Rule 1 (Principle of Distinction between Civilians and Combatants).
[529] *Katanga* Trial Judgment, para. 800.
[530] *Milošević* Trial Judgment, paras 910- 912.

(15) Attacking or Bombarding Undefended Places

Article 8(2)(b)(v) of the Rome Statute prohibits the following crime in the context of an IAC:

> "attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives".

Depriving civilians of OIS could be prosecuted under this war crime, particularly, if the attack or bombardment is directed against villages in agricultural areas, dwellings where civilians take shelter or buildings used to store/produce food or purify water, hospitals and other medical facilities.

(16) Attacking Protected Objects

Article 8(2)(b)(ix) and Article 8(2)€(iv) of the Rome Statute prohibit, in an IAC or a NIAC respectively:

> "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives".

Attacks carried out against OIS such as hospitals, medical facilities and places where the sick and wounded are treated as well as buildings dedicated to charitable purposes (such as humanitarian aid services) can be classified under this war crime.

(18) Attacking Objects or Persons Using the Distinctive Emblems of the Geneva Conventions

Articles 8(2)(b)(xxiv) and 8(2)(e)(ii) of the Rome Statute criminalises, in an IAC or a NIAC respectively:[531]

> "intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the GCs in conformity with international law".

Attacks conducted against such objects or personnel in order to prevent the access of the population to OIS would establish this crime.

(19) Attacking Personnel or Objects Involved in a Humanitarian Assistance or Peacekeeping Mission

Articles 8(2)(b)(iii) and 8(2)(e)(iii) of the Rome Statute prohibit, in an IAC and NIAC respectively:[532]

> "intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict".

Respect and protection of humanitarian assistance operations, in particular, is an outcome of the prohibition of starvation since such assistance is indispensable for the delivery of humanitarian relief to civilian populations threatened with starvation.[533] Accordingly, causing the starvation of civilians through attacking humanitarian personnel, installations, material, units or vehicles involved in distribution of food, water, medicine and other OIS could be prosecuted under this crime. Similarly, Peacekeeping missions in certain circumstances are tasked with providing support to humanitarian assistance missions,[534] facilitating the safe and prompt delivery of humanitarian assistance and helping

[531] This prohibition also forms a part of customary law: *Customary IHL: Rules*, Rule 30 (Persons and Objects Displaying the Distinctive Emblem); Triffterer et al. (2016), p. 755.
[532] This prohibition also forms a part of customary law. *Customary IHL: Rules*, Rules 31 (Humanitarian Relief Personnel), 32 (Humanitarian Relief Objects), 33 (Personnel and Objects Involved in a Peacekeeping Mission).
[533] *Customary IHL: Rules*, Rules 31 (Humanitarian Relief Personnel), 32 (Humanitarian Relief Objects).
[534] See, e.g., UNSC Resolution 781, UN Doc S/RES/781, October 1992, para. 2.

create a secure environment for their activities.[535] In such circumstances, targeting peacekeeping operations may also entail deprivation of OIS.

CRIMES AGAINST HUMANITY

(20) Murder

Murder as a crime against humanity is prohibited under Article 7(1)(a) of the Rome Statute.[536] Causing the death of one or more persons through depriving them of OIS may be prosecuted under this crime against humanity.

(21) Extermination

Extermination as a crime against humanity is prohibited under Article 7(1)(b) of the Rome Statute. This includes the intentional infliction of conditions of life including, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.[537]

(22) Persecution

Article 7(1)(h) of the Rome Statute prohibits the persecution against any identifiable group or collective on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law.[538] The Rome Statute defines persecution as the intentional and severe deprivation of fundamental rights of a group of persons due to their group identity or collectivity.[539]

(23) Deportation or Forcible Transfer of Population

Deportation or transfer of population is prohibited under Article 7(1)(d) of the Rome Statute.[540] Specifically, 'deportation or transfer of population' means forced displacement of one or more persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.[541]

(24) Other Inhumane Acts

Article 7(1)(k) of the Rome Statute prohibits the crime against humanity of '[o]ther inhumane acts of a similar character [to other crimes against humanity listed under Article 7] intentionally causing great suffering, or serious injury to body or to mental or physical health'.[542] This is a catch-all prohibition that is aimed at criminalizing as a crime against humanity inhumane conduct that is of a similar nature and gravity to other crimes but not specifically captured by other acts listed under Article 7(1) of the Rome Statute.[543] Therefore, if an act fits the description of any other specific crime under Article 7(1) of the Rome Statute, for example murder, this catch all provision should not be relied upon.[544]

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[535] See, e.g., UNSC Resolution 1101, UN Doc S/RES/1101, 28 March 1997, paras 2-8.
[536] Rome Statute, Article 7(1)(a). This crime is also provided in: ICTY Statute, Article 5 (a); ICTR Statute, Article 3(a); SCSL Statute, Article 2(a); Law on ECCC, Article 5; Nuremberg Charter, Article 6 (c); Tokyo Charter, Article 5(c).
[537] Rome Statute, Article 7(1)(b) & 7(2)(b). This crime is also provided in: ICTY Statute, Article 5(b); ICTR Statute, Article 3(b); SCSL Statute, Article 2(b); Law on ECCC, Article 5; Nuremberg Charter, Article 6(c); Tokyo Charter, Article 5(c).
[538] Rome Statute, Article 7(1)(h). This crime is also provided in: ICTY Statute, Article 5(h); ICTR Statute, Article 3(h); SCSL Statute, Article 2(h); Law on ECCC, Article 5; Nuremberg Charter, Article 6(c); Tokyo Charter, Article 5(c)
[539] Rome Statute, Article 7(2)(g).
[540] Rome Statute, Article 7(1)(d). The crime against humanity of deportation has also been criminalised under the following instruments: ICTY Statute, Article 5(d); ICTR Statute, Article 3(d); SCSL Statute, Article 2(d); Law on ECCC, Article 5; Nuremberg Charter, Article 6(c); Tokyo Charter, Article 5(c).
[541] Rome Statute, Article 7(2)(d).
[542] Rome Statute, Article 7(1)(k). Crime against humanity of other inhumane acts has also been criminalised in ICTY Statute, Article 5(i); ICTR Statute, Article 3(i); SCSL Statute, Article 2(i); Law on ECCC, Article 5; Nuremberg Charter, Article 6(c); Tokyo Charter, Article 5(c).
[543] *Katanga & Ngudjolo* Confirmation Decision, para. 450. Triffterer et al. (2016), p. 235.
[544] *Muthaura et al.* Confirmation Decision, para. 269.

GENOCIDE

(25) Genocide by Killing

Article 6(a) of the Rome Statute prohibits genocide by killing or one or more persons who belong to a national, ethnic, racial or religious group with the intent to destroy such group, in whole or in part.[545] Evidence demonstrating that the perpetrator caused the deaths of the members of one of these protected groups by depriving them of OIS with the specific intention to destroy such group would establish the crime of genocide by killing

(26) Genocide by Causing Serious Bodily or Mental Harm

Article 6(b) of the Rome Statute prohibits genocide by causing serious bodily harm to one or more persons who belong to a national, ethnic, racial or religious group with the intent to destroy such group.[546] Accordingly, evidence demonstrating that the perpetrator caused serious bodily or mental harm to the members of one of these protected groups by depriving them of OIS with the specific intention to destroy such group would establish this crime.

(27) Genocide by Inflicting Conditions of Life

Article 6(c) of the Rome Statute prohibits genocide by deliberately inflicting conditions of life calculated to bring about physical destruction on one or more persons who belong to a national, ethnic, racial or religious group with the intent to destroy the whole or part of the group.[547] Evidence demonstrating that the perpetrator inflicted conditions of life, such as deprivation of OIS, on the members of one of these protected groups with the specific intention to destroy the group would establish this crime

[545] This prohibition is derived from the Genocide Convention and forms part of customary international law. Genocide Convention, Article 2; Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, para. 161.
[546] This prohibition is derived from the Genocide Convention and forms part of customary international law. See Genocide Convention, Article 2; Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, para. 161.
[547] This prohibition is derived from the Genocide Convention and forms part of customary international law. See Genocide Convention, Article 2; Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, para. 161.

Starvation under the IHL Framework

International Humanitarian Law (IHL), also known as the law of war, is the body of law that seeks to limit the effects of armed conflict for humanitarian purposes.[548] It is applicable during armed conflicts, including situations of occupation.[549]

Fundamental Principles

The assessment of lawfulness of any deprivation of OIS, especially when both civilians and non-civilians are affected, is made on the basis of the fundamental principles of IHL applicable regardless of the characteristics of the armed conflict. These are the principles of distinction, proportionality and precautions.[550] Summarised definitions are provided in GRC's Starvation Mobile App.

IHL Violations

Violations of IHL can be perpetrated by a wide range of entities including military personnel, government members, party officials and administrators, members of organised armed groups, and civilians.[551] Based on the gravity of the offence, IHL violations can be categorised into 'simple violations', 'serious violations', and 'grave breaches'. Serious violations and grave breaches amount to war crimes.[552] The severity of a violation is defined by its breach of a rule "protecting important values" and its implication of "grave consequences for the victim".[553] Grave breaches are specifically delineated by the Geneva Conventions and their additional protocols.[554] Grave breaches entail specific rights and obligations for all states, which are duty-bound to prosecute or extradite the perpetrator of grave breaches (*aut dedere aut judicare)*.[555]

Prohibition of Starvation

Starvation of civilians as a method of warfare is a serious violation of IHL but falls short of a grave breach. Article 54(2) of Additional Protocol I provides that:

> It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population [...] for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

Its NIAC counterpart, Article 14 of Additional Protocol II, also provides that:

> It is prohibited to attack, destroy, remove or render useless [for the purpose of starving civilians as a method of combat], objects indispensable to the survival of the civilian population.

In both articles, the concept of OIS is open-ended by design. Typical yet non-exhaustive examples include 'foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works'.[556] Depending on the specific circumstances on the ground such as climate and weather conditions, objects like clothing, shelter, electricity, and

[548] ICRC, 'What is International Humanitarian Law?', July 2004, p. 1.
[549] The applicability is triggered by the existence of factual circumstances irrespective of any formalities such as a declaration of war. For criteria of determination of the existence of an armed conflict, see M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar 2019) ('Sassòli *IHL*'), pp. 169, 176, 180, 183.
[550] Sassòli *IHL*, pp. 347, 360, 365; *Customary IHL: Rules*, Rules 1, 7, 14, 15-21.
[551] See, e.g., 'The *Zyklon B* Case' in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, vol 1 (HM Stationery Office 1947), 93-104 (convicting, inter alia, the owner and chemist of the company supplying Nazi with poinson gas for the concentration camp); 'The *I.G. Farben Trial*. Trial of Carl Krauch and Twenty-Two Others' in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, vol 10 (HM Stationery Office 1949), 1-68 (convicting directors of the private chemicals company for, inter alia, participating in the enslavement of concentration camp inmates); 'Trial of Josef Alstötter and Others' in UN War Crimes Commission, *Law Reports of Trials of War Criminals*, vol 6 (HM Stationery Office 1948), 1-110 (convicting judges for enforcing grossly unjust laws of the Nazi Germany).
[552] *Customary IHL: Rules*, Rule 156.
[553] *Tadic´ case*, ICTY Appeals Chamber Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 1995, para 94.
[554] GC I, Article 50; GC II, Article 51; GC III, Article 130; GC IV, Article 147; AP I, Article 85.
[555] GC I, Articles 49-50; GC II, Articles 50-51; GC III, Articles 129-130; GC IV, Articles 146-147. See also AP I, Articles 85, 86, 88; ICRC Advisory Service, Penal Repression: Punishing War Crimes.
[556] *Customary IHL: Rules*, p. 186 (Rule 54).

fuel may also qualify.[557] As modern armed conflicts evolve, it is entirely possible that OIS would also encompass the less traditional types of objects.[558]

The prohibition of deliberate starvation has also gained **customary law status**.[559] Customary IHL as compiled by the ICRC specifically forbids: attacking OIS of the civilian population (Rule 54); denying access of humanitarian aid intended for civilians in need, including deliberately impeding humanitarian aid (Rule 55); and restricting the freedom of movement of humanitarian relief personnel (Rule 56).[560]

However, starvation or, more generally, the targeting of OIS in an armed conflict is not inherently unlawful. **Depriving combatants**[561] **of OIS** is not, *per se* an unlawful way to conduct hostilities.[562] The rules on targeting sets out situations in an IAC where the interference with OIS is permissible, including when (1) the OIS is used for the sustenance of the opposing forces;[563] and (2) the OIS have both civilian and military use and the attack is not expected to cause the starvation of the civilians or force their movement.[564] The law governing NIACs does not contain similar exceptions explicitly,[565] providing only that OIS could become a lawful military objective if it makes an effective contribution to military actions and the destruction would offer a definite military advantage in the circumstances ruling at the time.[566]

Protection of Humanitarian Relief

The crime of starvation as found in Rome Statute lists 'impeding relief supplies' as an example of OIS deprivation.[567] In IHL, the regulation of humanitarian assistance is an issue related to but separate from the prohibition of starvation.[568]

Where a civilian population is inadequately supplied and their needs are not met,[569] parties to the armed conflict have the obligation to **allow and facilitate rapid and unimpeded passage of humanitarian relief**, so long as the relief is impartial in character, conducted without any adverse distinction, and subject to the parties' right of control.[570]

The obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief requires that when the civilian population faces the threat of starvation, the parties to the conflict must consent to the offer of an impartial and capable humanitarian agency to alleviate the suffering.[571] Such consent cannot be withheld arbitrarily.[572] After the consent is given, the obligation to facilitate

[557] ICRC Commentary to the APs, para. 2103 regarding AP I, Article 54; D. Akande and E.-C. Gillard, 'Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: The Underlying Rules of International Humanitarian Law' (2019) 17 Journal of International Criminal Justice 753, 758-759; Danish Ministry of Defense, Military Manual on International Law Relevant to Danish Armed Forces in International Operations (2016), p. 418.
[558] For example, the internet and other communications networks are not per se OIS. But cyber infrastructure would qualify where it is indispensable to the functioning of 'electrical generators, irrigation works and installations, drinking water installations, and food production facilities'. M.N. Schmitt and L. Vihul (eds), *Tallinn Manual 2.0 on International Law Applicable to Cyber Operations* (2nd edn, CUP 2017); Commentary on Rule 41, para. 5, p. 533.
[559] *Customary IHL: Rules*, Rule 53; AP I, Article 54(1); AP II, Article 14.
[560] *Customary IHL: Rules*, pp. 189-193 (Rule 54), 193-200 (Rule 55), 200-202 (Rule 56).
[561] This does not include combatants who are out of action due to injury or capture (*hors de combat*). They must be afforded, amongst other, access to sufficient food and water. See GC I, Article 12; ICRC, *Commentary on the First Geneva Convention* (CUP 2016) ('ICRC Commentary to GC I (2016)'), para. 1387 regarding GC I, Article 12; GC II, Article 12; ICRC, *Commentary on the Second Geneva Convention* (CUP 2017) ('ICRC Commentary to GC II (2017)'), para. 1432 regarding GC II, Article 12; GC III, Articles 26, 27; Common Article 3; ICRC Commentary to GC I (2016), para. 558 regarding Common Article 3, para. 558; AP II, Article 5(1)(b).
[562] The (degree of) compliance with IHL is particularly relevant where a conduct is charged both as a war crime and a crime against humanity. For example, if a water plant turns out to be a legitimate military target and the collateral damage affecting the civilians is permissible under IHL, the law of crime against humanity may not support a finding of guilt for its attack either. *Kunarac et al.*, Case No. IT-96-23&23/1-A, Judgment, 12 June 2002 ('*Kunarac et al.* Appeal Judgment'), para. 91: 'the laws of war provide a benchmark against which the Chamber may assess the nature of the attack [against a civilian population] and the legality of the acts committed in its midst'.
[563] AP I, Article 54(3); ICRC Commentary to the APs, para. 2112 regarding AP I, Article 54(3).
[564] AP I, Article 54(3); ICRC Commentary to the APs, paras 2111-2112 regarding AP I, Article 54(3).
[565] ICRC Commentary to the APs, para. 4795 regarding AP II, Article 14; J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (CUP 2005) ('*Customary IHL: Rules*'), p. 192 (Rule 54).
[566] AP I, Article 52(2); *Customary IHL: Rules*, Rule 8.
[567] Rome Statute, Articles 8(2)(b)(xxv) and 8(2)(e)(xix).
[568] See Mwatana for Human Rights and Global Rights Compliance, The Starvation Makers: The Use of Starvation by Warring Parties in Yemen as a Method of Warfare, ('Starvation Makers Report') September 2021, pp. 94-95.
[569] ICRC Q&A and Lexicon on Humanitarian Access (June 2014), p. 6.
[570] GC IV, Articles 23, 59, 61; AP I, Article 70; AP II, Article 18(2); *Customary IHL: Rules*, Rules 55-56. See Oxford Guidance, p. 48.
[571] *Customary IHL: Rules*, p. 197 (Rule 55).
[572] ICRC Commentary to the APs, paras 4876, 4885 regarding AP II, Article 18; ICRC Q&A and Lexicon on Humanitarian Access (2014) International Review of the Red Cross, p. 11.

further requires the parties to 'protect relief consignments and facilitate their rapid distribution',[573] and to not, in any way, 'divert relief consignments [...].'[574]

Starvation under the IHRL Framework

International Human Rights Law is a body of law that applies at all times, safeguarding the dignity of people and their fundamental freedoms.[575] **IHRL is simultaneously applicable whenever IHL and/or ICL applies**.[576] As such, **IHRL complements and reinforces IHL and ICL**.[577] Depriving a person of OIS can also be categorised as an infringement of human rights. At its core, IHRL protects individuals from the power of the state.[578] It defines the main obligations of the states and provides an avenue for victims to seek redress.[579]

IHRL Sources and Regimes

The primary sources of IHRL are international and regional human rights treaties, which are supplemented by customary international law.

The foundation of human rights law is the Universal Declaration of Human Rights ('UDHR') together with the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and their optional/additional protocols,[580] cumulatively referred to as the **International Bill of Rights**.

The ICCPR enumerates **civil and political ('CP') rights** which are collective rights that demand protection and fundamental freedom from the government. These rights include, among others, the right to life, right to effective remedy, right to equality, freedom of torture, freedom from slavery etc.[581] The ICESCR enumerates **economic, social and cultural ('ESC') rights** which demand action by the government to meet basic needs including, among others, health, food, shelter, housing, education.[582]

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[573] AP I, Article 70(4).

[574] AP I, Article 70(3)(c). For discussion n the permitted technical arragements a warring party can make see GRC's Starvation App and AP I, Article 70(3); GC IV, Articles 23, 59. This possibility is not explicitly provided for NIACs in AP II or in Common Article 3 t, but is considered to be part of customary IHL applicable in NIACs. F. Lattanzi, 'Humanitarian Assistance' in A. Clapham et al. (eds.), *The 1949 Geneva Conventions: A Commentary* (OUP 2015), p. 251; D. Akande and E.-C. Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, p. 26 ('Oxford Guidance'); and J.S. Pictet (ed), *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC 1958) ('ICRC Commentary to GC IV (1958)'), p. 322 regarding GC IV, Article 59.

[575] Historically, IHRL is for peacetime. See R. Kold, 'The Relationship Between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions' (1998) 324 International Review of the Red Cross 409; J.-M. Henckaerts, 'Concurrent Application of International Human Rights Law and International Humanitarian Law' (2007) 1 Human Rights and International Legal Discourse 1 ('Henckaerts, 'Concurrent Application of IHRL'). The applicability of IHRL in times of war have since been acknowledged by various UN resolutions. See, e.g., **Korean war**: UNGA Res. 804 (3 December 1953) UN Doc A/RES/804; **Israel-Palestine**: UNGA Res. 237 (14 June 1967) UN Doc A/RES/2252, UNGA Res. 2252 (ES-V) (4 July 1967) UN Doc A/RES/3419; **Iraq**: UN Commission on Human Rights Res. 1992/60 (3 March 1992) UN Doc E/CN.4/RES/1992/60; **Sudan**: UN Commission on Human Rights Res. 1996/73 (23 April 1996) UN Doc E/CN.4/RES/1996/73; **former Yugoslavia**: UNSC Res. 1019 (9 November 1995) UN Doc S/RES/1019, UNSC Res. 1034 (21 December 1995) UN Doc S/RES/1034, UNGA Res. 50/193 (22 December 1995) UN Doc A/RES/50/193; **Syria**: UNSC Res. 2258 (22 December 2015) UN Doc S/RES/2258, UNSC Res. 2268 (26 February 2016) UN Doc S/RES/2268; **Yemen**: UNSC Res. 2216 (14 April 2015) UN Doc S/RES/2216; **Somalia**: UNSC Res. 2036 (22 February 2012) UN Doc S/RES/2036, UNSC Res. 2093 (6 March 2013) UN Doc S/RES/2093, UNSC Res. 2297 (7 July 2016) UN Doc S/RES/2297, UNSC Res. 2408 (27 March 2018) UN Doc S/RES/2408; **South Sudan**: UNSC Res. 2206 (3 March 2015) UN Doc S/RES/2206, UNSC Res. 2241 (9 October 2015) UN Doc S/RES/2241, UNSC Res. 2187 (25 November 2014) UN Doc S/RES/2187.

[576] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestininan Territory*, Advisory Opinion, 9 July 2004 ('ICJ Wall Opinion'), para. 106; *Case Concerning Armed Activities on the Territory of the Congo* (DRC v. Uganda), Judgment, 19 December 2005, para. 216; *Ergi v. Turkey*, Application No. 66/1997/850/1057, Judgment, 28 July 1998; *Ahmet Ozkan and Others v. Turkey*, Application No. 21689/93, Judgment, 6 April 2004; *Isayeva and Others v. Russia*, Application Nos. 57947/00, 57948/00 and 57949/00, Judgment, 24 February 2005; *Isayeva v. Russia*, Application No. 57950/00, Judgment, 24 February 2005; *Cyprus v. Turkey*, Application No. 25781/94, Judgment, 10 May 2001 ('*Cyprus v. Turkey* Judgment'); *Varnava and others v. Turkey*, Applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment, 18 September 2009; *Hassan v. UK*, Application No. 29750/09, Judgment, 16 September 2014 ('*Hassan v. UK* Judgment'); *Al-Jedda v. UK*, Application No. 27021/08, Judgment, 7 July 2011; *Al-Skeini and Others v. UK*, Application No. 55721/07, Judgment, 7 July 2011; *Bámaca-Velasquez v. Guatemala*, Case No. 70, Judgment, Merits, 25 November 2000, paras 203-214. See also CCPR, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (29 March 2004) ('Human Rights Committee, General Comment No. 31'), para. 11; CCPR, 'General Comment No. 36: Article 6 Right to Life' (3 September 2019) ('Human Rights Committee, General Comment No. 36'), para. 64; CCPR 'General Comment No. 35: Article 9 Liberty and Security of Person' ('Human Rights Committee, General Comment No. 35'), para. 64.

[577] UN Human Rights Office of the High Commissioner, 'International Legal Protection of Human Rights In Armed Conflict', (2011) ('OHCHR, "International Legal Protection of Human Rights In Armed Conflict"'), p. 1.

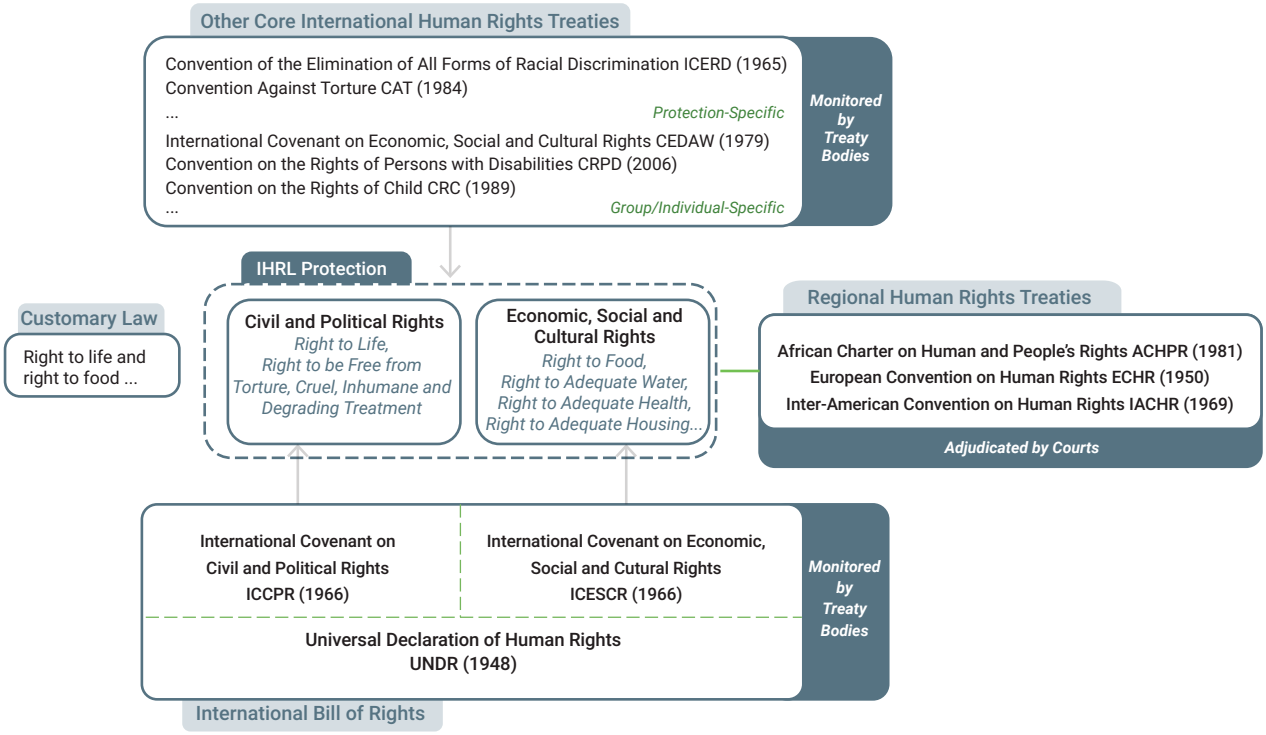
[578] S. Hutter, 'Starvation in Armed Conflicts: An Analysis Based on the Right to Food' (2019) 17 Journal of International Criminal Justice 723 ('Hutter, 'Starvation in Armed Conflicts'), pp. 734-735. Under certain circumstances, some argue that non-state actors also bear human rights obligations.

[579] UN Human Rights Office of the High Commissioner, 'Manual on Human Rights Monitoring', p. 4.

[580] OHCHR, The Core International Human Rights Instruments and their Monitoring Bodies. Additional protocols broaden or reinforce the obligations contained within a treaty. They are not standalone agreements, and work in conjunction with the treaty to which they are appended.

[581] N. Rodley, 'International Human Rights Law' in M.D. Evans (ed), *International Law* (5th edn, OUP 2018), pp. 781-782.

[582] N. Rodley, 'International Human Rights Law' in M.D. Evans (ed), *International Law* (5th edn, OUP 2018), pp. 781-782.


Other Core International Human Rights Treaties
Convention of the Elimination of All Forms of Racial Discrimination ICERD (1965)
Convention Against Torture CAT (1984)
...
Protection-Specific
International Covenant on Economic, Social and Cultural Rights CEDAW (1979)
Convention on the Rights of Persons with Disabilities CRPD (2006)
Convention on the Rights of Child CRC (1989)
...
Group/Individual-Specific
Monitored by Treaty Bodies
IHRL Protection
Customary Law
Right to life and right to food ...
Civil and Political Rights
Right to Life, Right to be Free from Torture, Cruel, Inhumane and Degrading Treatment
Economic, Social and Cultural Rights
Right to Food, Right to Adequate Water, Right to Adequate Health, Right to Adequate Housing...
Regional Human Rights Treaties
African Charter on Human and People's Rights ACHPR (1981)
European Convention on Human Rights ECHR (1950)
Inter-American Convention on Human Rights IACHR (1969)
Adjudicated by Courts
International Covenant on Civil and Political Rights ICCPR (1966)
International Covenant on Economic, Social and Cutural Rights ICESCR (1966)
Universal Declaration of Human Rights UNDR (1948)
Monitored by Treaty Bodies
International Bill of Rights

States must 'respect and ensure' the CP rights with immediate effect and without any political, social, cultural or economic qualifications or justification.[583] On the other hand, states are required to take steps 'to the maximum of its available resources' with a view to 'achieve progressively the full realisation' of the ESC rights.'[584]

Some basic aspects of these human rights are deemed as **minimum core obligations** subject to immediate realisation.[585] To discharge their core obligations, states must ensure the satisfaction of, at the very least, minimum essential levels of each right.[586] These obligations continue to apply even in times of armed conflict and military occupation.[587] For example, the right to be free from hunger is a core obligation under the ESC right to food subject to immediate realisation.

These rights are further supplemented by a range of **other IHRL treaties** which focus either on the rights of specific groups of individuals, such as the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW'); the Convention on the Rights of the Child ('CRC'); or the Convention on the Rights of Persons with Disabilities ('CRPD'); or on a particular set of protections such as the Convention Against Torture ('CAT'); or the Convention on the Elimination of All Forms of Racial Discrimination ('CERD').[588] Various UN Treaty bodies, which are international committees of independent experts, have been established to monitor the implementation of these individual core human rights treaties.[589]

By becoming parties to these treaties, States undertake legal obligations to implement the provisions of these instruments, and to report periodically to the respective treaty bodies mandated to monitor state compliance with these obligations.[590]

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[583] Article 2 International Covenant on Civil and Political Rights ('ICCPR'); Human Rights Committee, General Comment No. 31, paras 3, 14.
[584] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3 ('ICESCR'), Article 2. This permission of so-called 'progressive realisation' is based on the implied recognition of resource constraints faced by many states. See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights ('Maastricht Guidelines on ESCR'), principle 8; CESCR 'General Comment No. 3: The Nature of States Parties' Obligations' (14 December 1990) UN Doc E/1991/23 ('General Comment No. 3: The Nature of States Parties' Obligations'), para. 4. Nevertheless, states still must lay down a roadmap towards the full realisation as soon as possible. Progressive realisation cannot be used as a pretext for non-compliance. Maastricht Guidelines on ESCR, principle 9; General Comment No. 3: The Nature of States Parties' Obligations, para. 2.
[585] General Comment No. 3: The Nature of States Parties' Obligations, para. 10.
[586] General Comment No. 3: The Nature of States Parties' Obligations, para. 10.
[587] G. Giacca, 'Economic, Social, and Cultural Rights in Occupied Territories' in A. Clapham et al. (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) ('Giacca 2015'), p. 1490, para. 14.
[588] For a full-list of core international human rights treaties, see OHCHR, The Core International Human Rights Instruments and their Monitoring Bodies.
[589] UN Human Rights Office of the High Commissioner, 'Monitoring the Core International Human Rights Treaties' (2014) ('OHCHR, "The Core International Human Rights Treaties"'); OHCHR, 'International Legal Protection of Human Rights In Armed Conflict', p. 14. For a full list of UN Human Rights Treaty Bodies, see OHCHR, The Core International Human Rights Instruments and their Monitoring Bodies.
[590] All treaties except Optional Protocol to CAT ('OPCAT') require periodic reporting. See OHCHR, 'The Core International Human Rights Treaties'.

In addition, there are a number of **regional human rights treaties** (and additional protocols), including the African Charter on Human and People's Rights ('ACHPR') and its additional protocols; the European Convention on Human Rights ('ECHR') and its additional protocols; and the Inter-American Convention on Human Rights ('IACHR') and its additional protocols. These regional agreements only apply to states within their respective global region but their jurisprudence can prove useful for comparative study.

Finally, IHRL also enumerates the rights and freedoms accepted into **customary international law** which would become binding on all states regardless of whether they have ratified the relevant treaty or not. This includes, among others, the right to life and right to be from hunger.[591]

Human Rights Obligations

Human rights obligations fall upon the state that exercises **effective 'authority and control'** over the individual,[592] or a territory.[593] Traditionally, this would be the territorial state.[594] But where such control is in the hands of a foreign power, e.g., in case of occupation, the foreign state would bear the human rights obligations even though this is beyond its borders,[595] and regardless of how such control is obtained.[596]

State Obligations

The specific obligations owed in a particular circumstance vary according to the conduct in question, as well as the treaty provision relevant to the facts. Generally, however, states are expected to:[597]

(i) '**respect**' rights by ensuring that they do not consciously or arbitrarily violate them or interfere with their enjoyment;
(ii) '**protect**' rights by taking positive action to prevent foreseeable harm at the hands of third parties; and
(iii) '**fulfil**' rights by taking positive measures such as adopting appropriate legislative, administrative, budgetary, judicial, promotional, and other measures. This in turn includes an obligation to facilitate, promote and provide.

Non-State Actors Obligations

The extent to which IHRL is applicable to the non-state armed groups is debatable. Nevertheless, there is broad acceptance that at least the NSAGs which are '**exercising either government-like functions or *de facto* control over territory and population** must respect and protect the human

[591] OHCHR, 'International Legal Protection of Human Rights In Armed Conflict', p. 14.
[592] ICCPR, Article 2; *López Burgos v. Uruguay*, Communication No. R.12/52 (29 July 1981) CCPR/C/13/D/52/1979, Supp. No. 40 A/36/40 176, paras 12.2-12.3; *Coard et al. v. United States*, Case 10.951, Report No. 101/99, 29 September 1999, para. 37; *Mohamed Abdullah Saleh Al-Asad v. the Republic of Djibouti*, Communication No. 383/10, African Commission on Human and Peoples' Rights, 55th Ordinary Session for the African Commission (12 May 2014), para. 134; *Jaloud v. The Netherlands*, Application No. 47708/08, Judgment, 20 November 2014, para. 154; *Öcalan v. Turkey*, Application No. 46221/99, Judgment, 12 May 2005, para. 91; *Issa and Ors v. Turkey*, Application No. 31821/96, Judgment, 16 November 2004, para. 71; Human Rights Committee, General Comment No. 35.
[593] Article 2 ICCPR; *Loizidou v. Turkey* (Preliminary Objections), Application No. 15318/89, Judgment, 23 March 1995, para. 62; *Loizidou v. Turkey*, Application No. 15318/89, Judgment, 18 December 1996, paras 52-57; *Cyprus v. Turkey* Judgment, para. 77; *Medvedyev and Others v. France*, Application No. 3394/03, Judgment, 29 March 2010, para. 67; *Al-Saadoon and Mufdhi v. the United Kingdom*, Application No. 61498/08, Judgment, 2 March 2010, para. 128; ICJ Wall Opinion, para. 112.
594 Article 2(1) of ICCPR includes both a jurisdictional and territorial clause requiring the state party to respect and ensure to 'all individuals within its territory and subject to its jurisdiction' the rights guaranteed therein. Article 1 of the European Convention on Human Rights ('ECHR') requires states to 'secure to everyone within their jurisdiction the rights and freedoms set forth in the Convention'. Whereas the American Convention on Human Rights ('ACHR') speaks of 'all persons subject to their jurisdiction' (Article 1). However, the ICESCR and the African Charter on Human and Peoples' Rights ('ACHPR') do not contain a *ratione personae* or *ratione loci* clause. Notwithstanding this lacuna, it is generally assumed that the applicability of IHRL obligations are framed in jurisdictional terms (see Giacca 2015, p. 110).
[595] Human Rights Committee, General Comment No. 36, para. 63; also supported by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic Social and Cultural Rights, Principle 9(b); HRC has recognised the extraterritorial application of the ICCPR for acts that have taken place outside of the national territory, both in its general comments (General Comment 31, para. 10) and in its Concluding Observations on: USA, 1995, paras 266-304, and 2006, para. 10), and Israel (2003, para. 11, and 1998, para. 10), as well in the views it has taken on individual cases in the context of the communications procedure (Views of 29 July 1981, *López Burgos v. Uruguay*, Communication No. R.12/52 [29 July 1981] CCPR/C/13/D/52/1979, Supp. No. 40 A/36/40 176; Views of 29 July 1981, *Lilian Celiberti de Casariego v Uruguay*, Communication No. 56/79 [17 July 1979] CCPR/C/OP/1; Views of 31 March 1983, *Mabel Pereira Montero v Uruguay*, Communication No. 106/81 [29 August 1981]). See also Human Rights Committee, General Comment No. 36, para. 22.
[596] Human Rights Committee, General Comment No. 31, para. 10; *Loizidou* (Preliminary Objections), para. 62; *Loizidou* (Merits), paras 52-56. See also ICJ Wall Opinion, paras 109-111.
[597] A. Müller, *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law: An Analysis of Health Related Issues in Non-international Armed Conflicts: Volume 2* (Nottingham Studies on Human Rights 2013) p. 70. ('Müller').

rights of individuals and groups'.[598] Similar to states, the NSAGs in such circumstances are required to:

(i) '**respect**' by abstaining from specific conduct resulting in human rights violations;
(ii) '**protect**' by taking positive steps towards ensuring the human rights of the civilian population under their control, or at least the minimum core obligations of these rights;[599]

Further, many NSAGs which have displaced the state authorities in the concerned territory are also being subjected to the obligation to '**fulfil**' human rights, at least the obligation to facilitate people's access to basic human rights.[600]

The exact extent and scope of the obligations depends on the NSAG's distinct organisation, authority and capacities and must be determined on a case-by-case basis.[601] For instance, in Yemen, the Houthi armed group exercises territorial control and government-like functions in the northern part of Yemen.[602] They therefore have the obligation to 'respect' through non-interference and, to the extent possible, 'protect' and 'facilitate' the enjoyment of human rights by the individuals subject to their control.[603]

However, it should be noted that **the application of IHRL obligations to NSAGs does not relieve the concerned state of its IHRL obligations**.[604] The state still retains the obligation to take all appropriate diplomatic, economic, judicial and other measures to protect the human rights of the population living under NSAG's *de facto* control.[605]

Starvation and ESC Rights

In a case of starvation, the core social right affected is the **right to an adequate standard of living**.[606] This requires, at a minimum, the realisation of the right to adequate food and nutrition, water and housing. Closely related to this are the right to health, right to life and right to be protected from torture and other inhuman treatment. These individual rights are interrelated.

ESC Right	International Human Rights Conventions	African Framework	European Framework	American Framework
Right to Food *(incl. right to adequate food, right to be free from hunger)*	UDHR, Art. 25 ICESCR, Art. 11	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 15	*Not recognised explicitly*	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 12

[598] OHCHR, 'Joint Statement by Independent United Nations Human Rights Experts on Human Rights Responsibilities of Armed Non-State actors,' (25 February 2021). For an overview of the practice of the UN Human Rights Council regarding IHRL obligations of ANSAs, see Geneva Academy, 'Human Rights Obligations of Armed Non-State Actors: an Exploration of the Practice of the UN Human Rights Council' (December 2016) ('Geneva Academy "Human Rights Obligations of Armed Non-State Actors"'), p. 3; A. Clapham, *Human Rights Obligations of Non-State Actors* (OUP 2006), p. 32.
[599] T. Rodenhäuser, *Organizing Rebellion: Non-State Armed Groups Under International Humanitarian Law, Human Rights Law, and International Criminal Law* (OUP 2018), p. 149.
[600] Hutter, 'Starvation in Armed Conflicts, p. 750.
[601] G. Giacca, *Economic, Social and Cultural Rights in Armed Conflict* (OUP 2014) ('Giacca (2014)'), pp. 270-271; UN Human Rights Council, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Armed Non-State Actors: the Protection of the Right to Life,' UN Doc. A/HRC/38/44 (18 June 2018), para. 96, arguing that the human rights obligations of ANSAs derive from the nature of their control and degree of organisation, or capacity. Geneva Academy, 'Human Rights Obligations of Armed Non-State Actors' ('Geneva Academy Report'), pp. 26-30.
[602] 'The Houthi Supervisory System: The interplay of Formal State Institutions and Informal Political Structures,' ACAPS Yemen Analysis Hub (June 17, 2020); GEE, supra note 98 at para. 14.
[603] Starvation Makers Report, pps. 122., 231.
[604] Geneva Academy Report, p. 29; GRC Starvation Makers Report, p. 121.
[605] Geneva Academy Report, p. 29; UN Human Rights Committee, Consideration of Report Submitted by State Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, UN Doc. CCPR/C/MDA/CO/2, 4 November 2009, para. 5.
[606] ICESCR, Article 11.

ESC Right	International Human Rights Conventions	African Framework	European Framework	American Framework
Right to Adequate Water	UDHR, Art. 25 ICESCR, Art. 11(1)	ACHPR, Guidelines on Right to Water in Africa[607]	European Social Charter, Art. 31[608]	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 11
Right to Adequate Health	UDHR, Art. 25 ICESCR, Art. 12	ACHPR, Art. 16	European Social Charter, Art. 11	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 10
Right to Adequate Housing	UDHR, Art. 25 ICESCR, Art. 11(1)	African Charter on the Rights and Welfare of the Child, Art. 20	European Social Charter, Art. 31 European Convention on the Legal Status of Migrant Workers	*Not recognised explicitly*
Right to livelihood	UDHR, Art. 25 ICESCR, Arts. 6, 11 CEDAW, Art. 14(h)	*Not recognised explicitly*	European Social Charter, Art. 4	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 7

In the context of ESCR, as with other human rights, States have obligations to respect (refrain from a violation of ESCR), to protect (prevent third parties from violating ESCR) and to fulfil these rights (including obligations to facilitate, provide and promote).[609]

In assessing which actions or omissions constitute a violation of ESCR, it is important to differentiate between the inability or unwillingness of a State to comply with its treaty obligations.[610] Unwillingness implies a deliberate choice to neglect or deny these obligations, which can lead to a violation of rights. Inability reflects lack of capacity or resources stemming from external factors beyond one's control. In such cases, the main guiding principle for evaluating State compliance with this specific set of rights is the **principle of progressive realization** to the **maximum available resources** (which includes both the resources existing within a State and those available through international cooperation and assistance).[611] To comply with this progressive standard, States are required to take deliberate, concrete and targeted steps within a reasonable period of time to comply with ESCR.[612] Additionally,

[607] While the ACHPR does not expressly include the right to water, it is implied from the Charter's protection of ESC development; health; access to natural resources; the environment; and, food. International Justice Resource Center, 'African Commission Adopts Guidelines on the Human Right to Water' (8 July 2020).
[608] As interpreted by the European Committee of Social Rights which includes specific obligations related to access to safe drinking water and sanitation under the right to adequate housing. Office of the UN High Commissioner for Human Rights (OHCHR), 'The Right to Water: Fact Sheet No. 35' (2010), p. 11.
[609] CESCR, General Comment No. 12; It is important to note that the obligation to fulfil may be discharged through international assistance and cooperation.
[610] CESCR, General Comment No. 14: The right to the highest attainable standard of health (Article 12 of the Covenant), para 47; CESCR, General Comment No. 12: The Right to Adequate Food (Article 11 of the Covenant), para.17; Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para.13.
[611] ICESCR, Article 2.1 ('Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'); CESCR, General Comment No. 3, The nature of States parties' obligations (art. 2,); CESCR, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant statement. (2007).para 8 ('In considering a communication concerning an alleged failure of a State party to take steps to the maximum of available resources, the Committee will examine the measures that the State party has effectively taken, legislative or otherwise. In assessing whether they are "adequate" or "reasonable", the Committee may take into account, inter alia, the following considerations: (a)The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights; (b)Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner; (c)Whether the State party's decision (not) to allocate available resources was in accordance with international human rights standards; (d)Where several policy options are available, whether the State party adopted the option that least restricts Covenant rights; (e)The time frame in which the steps were taken; (f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.').
[612] CESCR, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant statement. (2007), para.3; ICESCR, Article 2(1); UN, 'Limburg Principles', para. 21.

States are prohibited from adopting retrogressive measures that decrease existing access to ESCR,[613] or from implementing discriminatory practices in relation to the enjoyment of these rights.[614]

Furthermore, independently of resource or other constraints, States must always adhere to the minimum core obligations of each ESCR right, ensuring immediate access to, at least, the 'minimum essential level' of ESCR.[615]

There is an increasingly strong emphasis on four key components for the proper implementation of the core and non-core obligations of these rights:[616]

- **availability**;
- **accessibility** (both physical and economic);
- **acceptability** (cultural, religious and ethical appropriateness); and
- **good quality** of facilities, goods, services and programmes that are provided to the individual rights holders under the individual ESC rights.

Taken together, these four elements 'describe the adequacy of steps taken to implement different ESC rights'.[617]

Example of Starvation-Related Human Rights Violations
Formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food, water, health and housing.[618]
Denial of access to food, water, health and housing towards particular civilians or groups based on discriminatory grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin or affiliation with particular armed groups.[619]
Failure to prioritise allocation of states resources or insufficient expenditure towards enjoyment of the basic ESC rights.[620]
Failure of a State to consider its international legal obligations regarding upholding human rights when entering into agreements with other States or international organisations.[621]

[613] CESCR, General Comment No. 3, The nature of States parties' obligations (art. 2,); CESCR, An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant statement. (2007), para. 10 ('Should a State party use "resource constraints" as an explanation for any retrogressive steps taken, the Committee would consider such information on a country-by-country basis in the light of objective criteria such as: (a)The country's level of development; (b)The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant; (c)The country's current economic situation, in particular whether the country was undergoing a period of economic recession; (d)The existence of other serious claims on the State party's limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict. (e)Whether the State party had sought to identify low-cost options; and (f)Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason').
[614] ICESCR, Article 2, Article.2(2); Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, paras. 8 and 12.
[615] CESCR, General Comment No. 3, The nature of States parties' obligations (art. 2,); CESCR, General Comment No. 12 ('This comment outlines the right to adequate food and emphasizes that states must take immediate action to address hunger and ensure food security, regardless of resource constraints.); Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, paras. 9-10.
[616] See also OHCHR, 'The Right to Adequate Food: Fact Sheet No. 34' (2010), p. 8; Food and Agriculture Organization (FAO) Right to Food Handbooks, 'The Right to Food Within the International Framework of Human Rights and Country Constitutions' (2014), p. 9. These components are increasingly becoming a prominent feature of all the CESCR's general comments and further complement the minimum core approach in guiding states in the implementation of ESC rights, including in situations of armed conflict when IHL applies in parallel. Müller, p. 103.
[617] Müller, p. 104. Note that there are minor differences in the interpretation for these components for each ESC rights as outlined by the CESCR in the general comments. See, for **right to food**: CESCR, 'General Comment No. 12: The Right to Adequate Food (Article 11)' (12 May 1999) ('CESCR, General Comment No. 12'), paras 7-13; **right to water**: CESCR, 'General Comment No. 15: The Right to Water (Articles 11 and 12)' (20 January 2003) ('CESCR, General Comment No. 15'), paras 12-13; **right to health**: CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12)' (11 August 2000) ('CESCR, General Comment No. 14'), para. 12; **right to housing**: CESCR, 'General Comment No. 4: The Right to Adequate Housing' (13 December 1991) ('CESCR, General Comment No. 4'), para. 8; OHCHR, 'The Human Right to Adequate Housing: Fact Sheet No.21' (2009), pp. 10-11.
[618] For **right to food**: CESCR, General Comment No. 12, para. 19; **right to water**: CESCR, General Comment No. 15, para. 44; **right to health**: CESCR, General Comment No. 14, paras 48-52; **right to housing**: OHCHR, 'The Right to Adequate Housing: Fact Sheet No. 21' (2009), p. 14.
[619] CESCR, General Comment No. 12, para. 19; CESCR, General Comment No. 15; CESCR, General Comment No. 14.
[620] CESCR, General Comment No. 15, para. 44; FAO, 'The Legal Basis of the Right to Adequate Food and the Right to Water'; CESCR, General Comment No. 14, paras 48-52.
[621] For **right to water**: CESCR, General Comment No. 12, para. 19; **right to health**: CESCR, General Comment No. 14, paras 48-52.

Right to Food

The right to food is recognised as a fundamental human right,[622] and as part of the right to an adequate standard of living.[623] It is 'the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear'.[624]

The right to food is an umbrella term which includes the following:[625]

Right to be free from hunger is a basic and fundamental right[626] and has been independently recognised as having customary law status.[627] It constitutes the indispensable and **minimum core obligation** of right to food and is subject to immediate realisation, requiring immediate and urgent steps to be taken.[628]

This minimum core obligation in relation to the right to food is not limited to mere physical access to food, but also includes sustainable economic access that does not interfere with the enjoyment of other human rights.[629] This implies an obligation upon the State to include, even during armed conflicts, interventions to increase access to employment, markets or resources needed for primary food production (farmland, pasture, fodder, water, fishing grounds, seeds, tools, etc).[630] The minimum core content of the human right to food also converges with IHL. IHL ensures in fact the right to be free from hunger with norms related to requirements for basic health services and medical supplies,[631] as well as the distribution of food and OIS to the civilian population or the acceptance and facilitation of external relief assistance,[632] and the obligation upon the state not to deprive civilians of OIS.[633]

Right to adequate food addresses the less severe food deprivation and is 'realised when every man, woman and child, alone or in community with others, has physical access and economic access at all times to sufficient quality and quantity to satisfy the dietary needs of individuals.'[634] While this right is subject to progressive realisation, states are required to begin taking steps immediately to fulfil their obligations.

Right to Adequate Water

The right to water emanates from and is an indispensable part of the broader right to an adequate standard of living under ICESCR.[635] It is also closely linked to the right to food, as water is part of food intake and is necessary to produce and cook food and for agriculture.[636]

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[622] ICESCR recognises 'the fundamental right of everyone to be free from hunger' in Article 11(2). Interestingly, this is the only right of the Covenant which is recognised as being fundamental. Article 25(1) of the Universal Declaration of Human Rights ('UDHR') states that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food'. Children and mothers are entitled to special care and assistance, according to Article 25(2) of the UDHR. Article 11(1) of ICESCR lists adequate food and housing as essential to the universal right to an adequate standard of living.

[623] Additionally, it is also recognised under various Voluntary instruments such as the Rome Declaration on World Food Security (1996), Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004), and Universal Declaration on the Eradication of Hunger and Malnutrition (1974).

[624] UN Economic and Social Council, 'The Right to Food Report by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, Submitted in Accordance with Commission on Human Rights Resolution 2000/10', UN Doc. E/CN.4/2001/53 (7 February 2001), para. 14.

[625] ICESCR, Article 11. See also S. Hutter, *Starvation as a Weapon* (Nijhoff 2015) ('Hutter (2015)'); Hutter, 'Starvation in Armed Conflicts'.

[626] ICESCR, Article 11(2).

[627] UN General Assembly, 'Interim Report of the Special Rapporteur on the Right to Food', UN Doc. A/72/188 (21 July 2017) ('Interim Report'), para. 52; Hutter (2015) and Hutter, 'Starvation in Armed Conflicts'; S. Narula, 'The Right to Food: Holding Global Actors Accountable Under International Law', (2006) 44 Columbia Journal of Transnational Law, pp. 691-800.

[628] CESCR, General Comment No. 12, paras 1, 6, 14.

[629] CESCR, General Comment No. 12, para. 8.

[630] Müller, p. 285.

[631] GC IV, Articles 16-32; AP I, Articles 8-20; AP II, Articles 7-12; *Customary IHL: Rules*, Rules 25-30, 109-111, 118.

[632] In relation to POWs and civilians in the power of the adverse party, see GC IV, Articles 19-33, 38, 72-73, 109-114; GC III, Articles 36-38, 49, 83-92, 94, 127-128; *Customary IHL: Rules*, Rules 121, 131. In relation to humanitarian access and relief assistance and the protection of relief workers, see GC IV, Articles 23, 55-57, 59-62; AP I, Article 69-71; AP II, Article 18.

[633] AP I, Article 54(2); AP II, Article 14.

[634] Mwatana for Human Rights and Global Rights Compliance, Starvation Makers Report p. 117; CESCR, General Comment No. 12, para. 13.

[635] ICESCR, Articles 11 (Right to Adequate Standard of Living) and 12 (Right to Health). See also FAO, 'The Legal Basis of the Right to Adequate Food and the Right to Water'; CESCR, General Comment No. 15, paras 2-3.

[636] FAO Right to Food Handbooks, 'The Right to Food within the International Framework of Human Rights and Country Constitutions', p. 11; CESCR, General Comment No. 15, paras 3, 7.

Right to water includes both freedoms and entitlements. Freedom refers to access to existing water supply and freedom from interference in the form of arbitrary disconnections or contamination. Entitlement includes equality of opportunity for people to enjoy the right to water.[637]

As with other ESC rights, States Parties have a non-derogable duty to satisfy the **core obligation of the right to water**, which are of immediate effect.[638] States must:[639]

a) ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
b) ensure the physical and economic access to water and water facilities and services that provide sufficient, safe and regular water on a non-discriminatory basis, especially for disadvantaged or marginalised groups;
c) ensure personal security is not threatened when having to physically access to water;
d) adopt and implement a national water strategy and plan of action addressing the whole population; which is periodically reviewed, on the basis of a participatory and transparent process; includes methods, such as right to water indicators and benchmarks, by which progress can be closely monitored and gives particular attention to all disadvantaged or marginalised groups;
e) monitor the extent of the realisation, or the non-realisation, of the right to water;
f) adopt relatively low-cost targeted water programmes to protect vulnerable and marginalised groups;
g) take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

In times of armed conflict and other emergency situations, the state obligations in relation to the right to water will apply concurrently with the applicable obligations under the IHL.[640]

Example of Starvation-Related Human Rights Violations of the Rights to Food and Water
Destruction of property, including houses, farms and livestock, water wells and pipe networks, when not justified by any military necessity. It would constitute a violation of both the right to food and water enshrined under the ICESCR and IHL provisions.[641]
Acts of looting of grains, burning of crops and killing of civilians and cattle resulting in food insecurity of the local population.[642]
Blocking, delaying or diverting relief food and water supplies to civilian populations[643] would also violate IHL and the IHRL minimum core obligation of right to be free from hunger.[644]

Right to Adequate Health

The realisation of the right to health, which is recognised in several international and regional conventions,[645] is dependent upon the realisation of other human rights, such as the right to food and water.[646] Access to an adequate supply of food and proper nutrition is in fact a prerequisite for the enjoyment of the right to health.[647]

[637] CESCR, General Comment No. 15, para. 10; OHCHR, 'The Right to Water: Fact Sheet No. 35' (2010), pp. 12-13.
[638] CESCR, General Comment No. 15, para. 40.
[639] CESCR, General Comment No. 15, para. 37.
[640] These includes protection of OIS, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage; ensuring that civilians, internees and prisoners have access to adequate water; non-interference with customary or traditional arrangements for water allocation; and refraining from diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons. See CESCR, General Comment No. 15, paras 21-22.
[641] UN General Assembly, 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict', UN Doc A/HRC/12/48 (15 September 2009), paras 957-958, 1319-1324; CESCR, General Comment No. 15, para. 44.
[642] UN Economic and Social Council, 'The Right to Food Report by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, Submitted in Accordance with Commission on Human Rights Resolution 2000/10', UN Doc. E/CN.4/2001/53 (7 February 2001), para. 27.
[643] CESCR, General Comment No. 12, para. 19.
[644] L. Doswald-Beck, *Human Rights in Times of Conflict and Terrorism* (OUP 2011), p. 481.
[645] ICESCR, Article 12; CERD, Article 5(e)(iv); CEDAW, Articles 11.1(f), 12; CRC, Article 24; European Social Charter of 1961 (as revised), Article 11; ACHPR, Article 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988, Article 10.
[646] CESCR, General Comment No. 14, para. 3.
[647] CESCR, General Comment No. 14, para. 15.

As with the right to water, the right to health also contains both freedoms and entitlements. Freedoms include the right to control one's health and body, including sexual and reproductive freedom, and enjoy non-interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. The entitlements include the right to enjoy the highest attainable level of health without discrimination.[648]

There is a non-exhaustive list of minimum core obligations in relation to right to health which are of immediate effect. States must:[649]

a) ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups;
b) provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
c) ensure equitable distribution of all health facilities, goods and services;
d) adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population.

In times of armed conflict and disasters, the right to medical treatment includes the creation of a system of urgent medical care, including the distribution of disaster relief and humanitarian assistance in emergency situations.[650] When internal resources are not sufficient, international assistance and resources must be sought in order to ensure the minimum core of ESC rights, including for the establishment of a basic health system that provides essential primary care to everyone, when internal resources are not sufficient.[651]

Example of Starvation-Related Human Rights Violations of the Right to Health
Damaging hydro-dams causing the stopping of essential services in the hospital, leading to deaths of patients, have been found to constitute a violation of the right to health.[652]
Preventing access to urgent medical care and medical supplies provided by relief agencies and the denial of medical assistance to wounded and sick which exposed the victims to serious health risks.[653]

Right to Adequate Housing

The right to adequate housing, also derived from the right to an adequate living, is recognised in Article 11(1) of the ICESCR.[654] It is not limited to having a roof over one's head or a house as a commodity. It has a broader meaning of living in peace, security and dignity.[655]

While the overall right to adequate housing is subject to progressive realisation, there are certain necessary steps that states need to take immediately. These include:[656]

a) enacting policies and legislation to prioritise disadvantaged social groups living in unfavourable conditions;
b) adoption of a national housing strategy which 'defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures';

[648] CESCR, General Comment No. 14, paras. 8, 9.
[649] CESCR, General Comment No. 14, para. 43.
[650] CESCR, General Comment No. 14, para. 16.
[651] Müller, p. 244.
[652] African Commission on Human and People's Rights, *DRC v. Burundi, Rwanda and Uganda*, Communication No. 277/1999, 29 May 2003, para. 88.
[653] Müller, p. 244.
[654] See also UDHR, Article 25(1); CERD, Articles 5(e)(iii) and 7; CEDAW, Article 14(2)(h); CRC, Articles 24(2)(c) and 27; CRPD, Article 28. The European Court of Human Rights has interpreted the right to respect for private and family life enumerated in Article 8 of the ECHR as encompassing the right to adequate housing (see *Connors v. United Kingdom*, Application No. 66746/01, Judgment, 27 May 2004, para. 95).
[655] CESCR, General Comment No. 4, para. 7.
[656] CESCR, General Comment No. 4, paras 11-13.

c) ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under the right to adequate housing;
d) Effective monitoring of inadequate housing situations.

Particular attention should be paid to **forced evictions** which constitutes a gross violation of human rights,[657] and often take place in connection with forced transfers of the population, internal displacement and forced relocations in the context of armed conflicts.[658] Forced evictions not only constitute a violation of the right to adequate housing, but would frequently violate other ESC rights as well as CP rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.[659]

Example of Starvation-Related Human Rights Violations of the Right to Housing
Destruction of property and mass and indiscriminate transfers of civilian population in times of armed conflict may violate IHL and the right to adequate housing.[660]
Arbitrary and forced evictions and displacement of local population from their land, especially where the land was the primary source for food would result in a violation of both the right to housing and food.[661]

Right to Livelihood

Livelihood can be defined as "the means by which households obtain and maintain access to the resources necessary to ensure their immediate and long-term survival. These essential resources can be categorized into six categories: (i) physical, (ii) natural, (ii) human, (iv) financial, (v) social, and (vi) political. Households use these assets to increase their ability to withstand shocks[662] and to manage risks that threaten their well-being."[663]

The right to livelihood is not explicitly mentioned in international frameworks. Nonetheless, it is a component of the broader right to an adequate standard of living[664] and the right to work,[665] which the Committee on Economic, Social and Cultural rights has also linked to the rights to food and health.[666] The Special Rapporteur on the right to food emphasises that the right to livelihood is linked to the wider right to food,[667] underscoring the importance of reinforcing and promoting local livelihoods options.[668]

[657] UN Commission on Human Rights, Resolution 1993/77: Forced Eviction in Commission on Human Rights Report on the Forty Ninth Session, E/1993/23, p. 227, operational paragraph 1.
[658] CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions' (2 May 1997) ('CESCR, General Comment No. 7'), para. 5.
[659] CESCR, General Comment No. 7, para. 4
[660] CESCR, General Comment No. 7, para. 5; OHCHR, 'The Human Right to Adequate Housing: Fact Sheet No.21' (2009), p. 14.
[661] OHCHR, 'The Human Right to Adequate Housing: Fact Sheet No.21' (2009), p. 14; UN General Assembly, 'Preliminary Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food, Jean Ziegler', UN Doc. A/56/210 (23 July 2001), para. 27.
[662] A shock may be defined as a sudden event that impacts on the vulnerability of a system and its components, e.g., conflict, a drought or the death or absence of the primary household financial provider, Action Against Hunger, 2013.
[663] This defintion comes from *Livelihoods & Conflict,* USAID, 2005, which adapts the definition established by Chambers & Conway in 1991 in their work with the UK Department for International Development (DFID) which developed the Sustainable Livelihoods Framework (SLF) "A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stress and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base."
[664] ICESCR, Article 11 (Right to Adequate Standard of Living); Universal Declaration of Human Rights, Article 25; CEDAW, Article 14(h).
[665] ICESCR, Article 6 (Right to work); European Social Charter, Article 4; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 7.
[666] See: *Committee on Economic, social and cultural rights,* Concluding observations on the fourth periodic report of Israel, E/C.12/ISR/CO/4, 12 November 2019, paras. 44,45, "the Committee remains concerned about the long-lasting and hazardous impact of the aerial herbicide sprayed by private companies hired by the Ministry of Defence in areas adjacent to the fence between Israel and Gaza. It is particularly concerned about the impact of such activities on the productivity of the crops and on the soil in nearby areas in Gaza. The Committee is also concerned about restrictions imposed on the access of Palestinians to their agricultural land, water sources, irrigation facilities and marine resources. It is further concerned about the confiscation of and damage to fishing boats, which has deprived Palestinians of their means of subsistence (arts. 6, 11 and 12)." See also: *African Commission on Human and People's Rights*, SERAC and the Center for Economic and Social Rights v Nigeria, 27 May 2002, "The Communication alleges that the Nigerian government has destroyed and threatened Ogoni food sources ... participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. ... Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni Communities." (para. 9)
[667] Special Rapporteur on the right to food 25 February–22 March 2019 A/HRC/40/56, speaking of fishery workers.
[668] UN Special Rapporteur on The Right To Food Recommends Principles And Measures To Discipline "Land Grabbing", 11 June 2009.

The right to livelihood is also associated with:

- The right to be free from arbitrary interferences with their private life, family, and home.[669]
- The right to own property.[670]
- The right to be free from racial discrimination.[671]
- The right to life.[672]
- The right to be free from torture and inhuman or degrading treatment.[673]

Conflict poses a significant threat to livelihoods, and particular attention should be paid to situations where access to livelihood assets begins to deteriorate. Many conflicts are caused by competition for essential livelihood resources and the lack of livelihoods,[674] underlining the importance of this right.

Example of Starvation-Related Human Rights Violations of the right to Livelihood[675]	**Due to**
Loss of access to agricultural and grazing land, water resources, food, timber, fish.	- Looting or destruction; - Burning, displacement, loss of access to grazing land; - Displacement, fighting between groups.
Loss of access to farm equipment, seeds, tools, sewing machines, vehicles, livestock, houses.	
Loss of access to labor power within a household, educations, skills, vocational training.	

Starvation and CP Rights

The right to be free from starvation is also protected within the scope of civil and political rights, specifically within the right to life and the prohibition of arbitrary deprivations of such right, enshrined in Article 6(1) of the ICCPR.[676]

CP Right	International Human Rights Conventions	African Framework	European Framework	American Framework
Right to Life	UDHR, Art. 3 ICCPR, Art. 6	ACHPR, Art. 4	ECHR, Art. 2	ACHPR, Art. 4
Prohibition of Torture	UDHR, Art. 5 ICCPR, Art. 7 CAT, Art.1	ACHPR, Art. 5	ECHR, Art. 3	ACHPR, Art. 5

[669] ICCPR, Article 17, *UN Human Rights Committee,* Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019, 22 September 2022. Daniel Billy belongs to the the indigenous minority group of the Torres Strait Islands. The indigenous people of the Torres Strait Islands, especially the authors who reside in low-lying islands, are among the most vulnerable populations to the impact of climate change. The applicants petitioned that the effects of climate change, and the inaction of the state to counter these, threatened *inter alia* their livelihoods. The Committee concluded that the State had violated article 17 of the ICCPR recalling that "the authors depend on fish, other marine resources, land crops, and trees for their subsistence and livelihoods, and depend on the health of their surrounding ecosystems for their own wellbeing." (para. 8.10)

[670] CERD, Article 5(d)(v), *Committee on the Elimination of Racial Discrimination,* Lars-Anders Ågren et al. v. Sweden, CERD/C/102/D/54/2013, 18 December 2018. The petitioners' claimed that their right to own property, protected under article 5 (d) (v) of the Convention, had been violated, as the State granted, without their consent, concessions for three open-pit mines within their traditional property where they pursue a traditional livelihood (reindeer herding). The committee found a violation of article 5 (d) (v) of the Convention "due to the lack of consideration of the petitioners' land rights in the granting of the mining concessions" (para. 6.22). See also: Committee on the Elimination of Racial Discrimination, 14 December 2022, CERD/C/FRA/CO/22-23, Concluding observations of the periodic reports of France, para. 16(e), The Committee framed land rights through the protection of the "way of life" of indigenous people.

[671] CERD, Articles 2 and 5, *Committee on the Elimination of Racial Discrimination,* Nicaragua, CERD/C/NIC/CO/15-21, 30 August 2022, The Committee was seriously concerned about the impact of extractive projects, as they "seriously affect their livelihoods and ways of life and generate food crises, forced displacement and health problems" for indigenous people (para. 24).

[672] Olga Tellis & Ors vs Bombay Municipal Corporation & Ors. Etc ,10 July, 1985. The Indian Supreme Court stated that the right to livelihood' is borne out of the 'right to life', as no person can live without the means of living, that is, the means of livelihood.

[673] Court of Arnsberg (Germany), Decision 12 L 190/19.A [25.04.2019], The Court recognised that the transfer of an asylum seeker under the Dubin regulation to France would be a violation of Article 3 of the European Convention on Human Rights prohibiting torture, and inhuman or degrading treatment, as the applicant would not be able to "secure a livelihood, find shelter or access basic medical care".

[674] For example, the conflict in the Middle Belt of Nigeria, see: Mercy Cops, Conflict, Livelihoods, and resilience: Community Capacities in Nigeria's middle Belt.

[675] Table adapted from chart from from *Livelihoods & Conflict,* USAID, 2005, with only the inclusion of Starvation related assets and conflict shocks.

[676] See CESCR, General Comment No. 12, para. 4 (acknowledging that food is 'indivisibly linked to the inherent dignity of the human person' and 'indispensable for the fulfilment of other human rights enshrined in the International Bills of Human Rights'. See also Human Rights Committee, General Comment No. 36, para. 26, which recognises that: 'The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity' and includes in the measures called for addressing adequate conditions for protecting the right to life measures aimed at addressing 'extreme hunger and malnutrition').

Right to Life

The right to life[677] is an **absolute right** that has attained '**peremptory status**' in international law.[678] This means that it has been accepted and recognised by the international community as a norm from which no derogation is permitted.[679] Importantly, the right to food has been recognised as a prerequisite for the realisation of the right to life.[680]

It is self-evident that deprivation of food and water threatens the possibility of survival of individuals. The Inter-American Court of Human Rights has previously recognised the infringement on the right to be free from malnutrition as a violation of right to life, and accorded remedies as such.[681]

The obligations under the right to life are two-fold. States have a **negative obligation** to refrain from engaging in conduct resulting in arbitrary deprivation of life.[682] Meanwhile, states also have **positive obligations** to take adequate measures to protect the lives of individuals under their jurisdiction[683] by preventing violence[684] and, when killing has occurred, to take positive action by effectively investigating and prosecuting those responsible.[685]

Right to be Free from Torture and Cruel Inhuman or Degrading Treatment

The right to be free from torture and cruel, inhuman or degrading treatment ('CIDT') is another CP right relevant to starvation.[686] Deprivation of food and water has been recognised as one of the acts constituting torture and inhuman and degrading treatment.[687] Like the right to life, the prohibition against torture and CIDT is an **absolute right** and cannot be derogated from.[688]

Under international human rights law, torture includes any act not sanctioned by law and by which severe mental/physical pain or suffering is intentionally inflicted on a person by or carried out with the consent or acquiescence of a public official or other person acting in an official state capacity,[689] for one of the following purposes:

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[677] UDHR, Article 3; ICCPR, Article 6.
[678] Human Rights Committee, General Comment No. 36, para. 2; Human Rights Committee, 'General Comment No. 6: Article 6 (Right to Life)' (30 April 1982), para. 1.
[679] Vienna Convention on the Law of Treaties, Article 53.
[680] Interim Report, para. 52; CESCR, General Comment No. 12, para. 14; General Comment No. 3: The Nature of States Parties' Obligations, para. 10. See also FAO, 'Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security' (November 2004), Guideline 16; Hutter (2015); 'Starvation in Armed Conflicts'.
[681] In *Sawhoyamaxa Indigenous Community v. Paraguay*, the Inter-American Court of Human Rights decided that the Government of Paraguay had violated the right to life of members of the Sawhoyamaxa indigenous community by failing to ensure them access to their ancestral lands, which provided the natural resources directly related to their survival capacity and the preservation of their ways of life. It was recognised that the denial of access to land and the traditional means of subsistence had led the community to extreme poverty, including deprivation of access to a minimum of food, and thus threatened its members' right to life. The Court ordered Paraguay to reinstate, within three years, the community members' tenure over their traditional lands or, if impossible, make over alternative lands and adopt measures in the meantime to deliver basic services to its members, including sufficient quantity and quality of food. *Sawhoyamaxa Indigenous Community v. Paraguay*, Case No. 146, Judgment, Merits, Reparations, and Costs, 29 March 2006 ('*Sawhoyamaxa v. Paraguay* Judgment').
[682] ICCPR, Article 6; Human Rights Committee, General Comment No. 36, para. 7.
[683] ICCPR, Article 6; Human Rights Committee, General Comment No. 36, paras 21, 22.
[684] Human Rights Committee, General Comment No. 36, para. 2; *Sawhoyamaxa v. Paraguay* Judgment, para. 155.
[685] *Armani Da Silva v. UK*, Application no. 5878/08, Judgment, 30 March 2016, paras 229-233.
[686] ICCPR, Article 7; CAT.
[687] Inter-American Report on Terrorism and Human Rights, para. 161. The ICTY has stated, for example, that while solitary confinement or the deprivation of food 'is not, in and of itself, a form of torture', depending on the severity, duration, and purpose, these acts may constitute torture. *Krnojelac*, IT-97-25-T, Judgment, 15 March 2002 ('*Krnojelac* Trial Judgment'), para. 183. See also *Boskoski*, IT-04-82-T, Judgment, 10 July 2008, paras 383, 385; *Delić*, IT-04-83-T, Judgment, 15 September 2008 ('*Delić* Trial Judgment'), paras 257, 270, 273, 315-19; *Krnojelac* Trial Judgment, paras 133-39 (finding inhuman treatment for 'brutal and deplorable living conditions' including cramped and unhygienic conditions and inadequate food). Where the detainees are deprived of food and drink, the prohibition of torture can also be violated, even if the extent of deprivation of nourishment could not be established (*Ireland v. UK*, Application No. 5310/71, Judgment, 13 December 1977). *M.S.S. v Belgium and Greece*, Application No. 30696/09, Judgment, 21 January 2011, paras 84 and 263 (finding breaches of the prohibition of inhuman or degrading treatment, in respect of the living conditions of refugees in detention, which included the deprivation of adequate food).
[688] See *Questions Relating to the Obligations to Prosecute or Extradite* (Belgium v. Senegal), Judgment, 20 July 2012, para. 99; *Al-Adsani v. UK*, Application No.35763/97, Judgment, 21 November 2002, para. 61; *Caesar v. Trinidad and Tobago*, Case No. 123, Judgment, 11 March 2005; General Comment No. 29, para. 3; UNCAT, 'General Comment No. 2', para. 1; ILC, 'Draft Articles on State Responsibility', UN Doc. A/56/10 (2001), Chapter IV.E.2. For CIDT, see UDHR, Article 5; ICCPR, Article 7; ECHR, Article 4; ACHPR, Article 5; CAT, Article 1; E. de Wet, 'The Prohibition of Torture as an International Norm of Jus Cogens and its implications for National and Customary Law' (2004) 15 European Journal of International Law, p. 97.
[689] CAT, Article 1. This is a specific element not required in the definition of torture in ICL and IHL: Elements of Crimes, Articles 7(1)(f) and 8(2)(a)(ii-1). Further, this element has also been interpreted to include NSAGs when exercising governmental authority. See *R v. Reeves Taylor* [2019] UKSC 51, Judgment, 13 November 2019, where the UK Supreme Court ruled that the category of persons 'acting in an official capacity' included members of armed groups, if they exercised governmental authority over a civilian population in a territory under their control.

a) obtaining from him or a third person information or a confession;
b) punishing him for an act he or a third person has committed or is suspected of having committed;
c) intimidating or coercing him or a third person; or
d) for any reason based on discrimination of any kind.

Acts that are not severe enough to amount to torture, but which nevertheless cause a relatively lower level of mental or physical pain and suffering on the victims could qualify as CIDT[690] when committed under the authorisation of an officer or state official.[691]

Like the right to life, the prohibition against torture under IHRL imposes both **positive and negative obligations**. Namely, states are required to both refrain from committing torture or other forms of ill-treatment and take positive legislative, administrative, judicial or other measures (including investigation and prosecution of the perpetrators) to prevent and criminalise acts of torture in any territory under its jurisdiction.[692] They are also prohibited from expelling, returning or extraditing a person to any other state where they would be in danger of being subjected to torture.[693]

Example of Starvation-Related Human Rights Violations	**Civil & Political Rights**
Actions resulting in starvation such as arbitrary killing of fisherman and unlawful airstrikes on farms or water infrastructure would also result in violations of the right to life.[694] Intentionally inflicting severe pain or suffering on humanitarian staff to obstruct or prevent humanitarian assistance would constitute a violation of the right to be free from torture.[695]	

[690] CAT, Article 16.
[691] CAT, Article 1(1). Whilst there is no particular test to distinguish torture from CIDT, distinguishing factors include the nature, duration, impact of the treatment, and the vulnerability of the victim (for example age, gender, or status). See *Selmouni v. France*, Application No. 25803/94, Judgment, 28 July 1999, para. 100; *Ireland v. UK*, Application No.5320/71, Judgment, 18 January 1978, para. 162.
[692] CAT, Articles 2, 4.
[693] CAT, Article 3 (otherwise known as the principle of 'non-refoulement').
[694] See Starvation Makers Report, p. 231.
[695] See Starvation Makers Report, p. 245, fn 752.

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